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## LOBOLO IS CHILD-PRICE<sup>1</sup>

M. D. W. JEFFREYS

### S Y N O P S I S

The introduction deals with the various attempts to translate, e.g., a term like lobolo by such phrases as bride-price, earnest, compensation, etc., including the recommendation not to translate such terms but to use, e.g. lobolo itself, in place of such terms or translations. The translation Child-price is then declared to be the only correct translation possible. Marriage among the patriarchal, patrilocal Negroes of Africa is discussed including the assertions of many that lobolo is necessary for marriage. Lobolo is then shown not to be necessary for a marriage. The ceremony that constitutes a marriage is discussed and found to be a rite of passage wherein lobolo has no function. The essential of a marriage is the communal or re-integrating meal. Valid marriages are shown to exist without lobolo. Lobolo is then shown to function effectively without any marriage taking place. The function of lobolo is discussed and it is found that its function is to transfer the status of a child from its position in its mother's group to a status in its cultural father's group; i.e. that lobolo is the price of child transfer from matrilineal relatives to patrilineal relatives, i.e. is the child-price. The position and function of both Sororate and of Levirate inevitably follow from this function of lobolo. The rules of divorce then become clear. The conclusions show that Malinowski, the functionalist, failed completely to grasp the function of lobolo, but that e.g. persons like Livingstone, Margaret Read, Linton and others grasped the idea that whosoever paid the lobolo bought the children; i.e. that lobolo is child-price.

### PART I

#### INTRODUCTION

THE purpose of this article is to contrast the institution of marriage with that of lobolo among Negro patriarchal societies in Africa. "The noun for the South African cattle-transfer giving 'father-right', possession of the children, is lobolo. The form lobola is the singular imperative of the verb ukulobola and its use as a noun is incorrect."<sup>2</sup> The correct Nguni noun is ilobolo,

not lobolo. The Sotho word is bogadi; the Bavili is bindele bi Kakwelo; the Kongo is nzimbu zi longo; the Luba is binti bia buku; the Ila is chiko<sup>3</sup> and so on. Torday recommended the use of the Ashanti word asenda<sup>4</sup> while Huntingford suggests either the Anglicized hedna from the Greek, *εδνα* or the Latin, *sponsalia*<sup>5</sup> both of which words refer to a parallel cultural custom in their respective societies. The Seligmans point out the suitability of the Arabic word, *mahr*.<sup>6</sup>

<sup>1</sup> Lobolo as a contract, as compensation, etc. are aspects that are not dealt with here.

<sup>2</sup> YOUNG, C. (1940) p. 158.

<sup>3</sup> TORDAY, E. (1929) p. 273.

<sup>4</sup> TORDAY, E. (1931) p. 5.

<sup>5</sup> HUNTINGFORD, G. W. B. (1931) p. 191.

<sup>6</sup> SELIGMAN, C. G. and B. Z. (1931) p. 76.

The English equivalents for such terms have been bride-price, bride-wealth, purchase-price, earnest, dowry, dower, marriage-settlement, indemnity, compensation, espousal-fee.<sup>1</sup>

Commenting on the most prevalently used one of these terms, viz. "bride-price" Torday remarks: "It is, of course, scarcely possible to find an English word which will convey the meaning of every native expression translated as 'bride-price'; but it would be difficult to find one which is more inadequate and mischievous."<sup>2</sup>

*Notes and Queries* (1929, p. 102), the official handbook of the Royal Anthropological Institute of Great Britain, commenting on the term "bride-price" says: "The payment of a bride-price is often erroneously believed to imply that the woman is purchased from her parents and becomes the property of her husband. This is not strictly true in any known instance. The term has, however, become too common to be discarded, but it would be preferable if the investigator always employed the *native term* in describing or referring to payments or gifts made by the groom or his group to the father or group of the bride." Junod favoured the use of *lobolo* as a technical term: "We shall use these words — *lobolo* or *ndjobolo* or *bukosi*, which are employed in Thonga as well as in Zulu and ought to be adopted as technical ethnographic terms."<sup>3</sup> Luttig likewise decided in favour of a native term in place of a translation. "Instead of the term 'bride-price' we propose to use the native term which is generally used in South Africa, namely *lobola*, to avoid a wrong comprehension of this custom."<sup>4</sup> I shall also use it generically for all such transactions in any patrilineal African tribe, rather than beg the question by using my own term, "child-price", whose ultimate use I shall justify in this article.

My claim that *lobolo* = child-price is the only true and correct definition is based upon the fact that during thirty years on the bench in Nigeria, beginning in 1915, I early learnt that

"dowry", as *lobolo* is called there, purchases the right to the woman's children. It did not buy the woman. "Polygamy is not a marriage system but an economic arrangement. The dowry (*lobolo*) is a late development and purchases the right to the children."<sup>5</sup> Others, of course, before me had made this same discovery but so far as I am aware no one has said, "*lobolo* is the child-price", a term I employed officially in 1935. "In order to secure the rights to those children the bridegroom, in the patrilineal type of society, enters into a contract with the bride's family. This contract is the dowry, the bride-price. It should really be called the children-price. By the payment of dowry the bridegroom acquires the right to retain the woman's children, he does not pay for the right of retaining the woman."<sup>6</sup>

Thus, the great missionary, David Livingstone, wrote: "(Among the Banyai) the practice prevails which is so very extensive in Africa, known to Europeans as 'buying wives'. Such virtually it is, but it does not appear quite in that light to the actors. So many head of cattle or goats are given to the parents of the girl 'to give her up' as it is termed, i.e. to forego all claim on her offspring, and allow an entire transference of her and her seed into another family. If nothing is given, the family from which she has come can claim the children as part of itself. The payment is made to sever the bond."<sup>7</sup> Among the Bechuana, "all children born to a family through its female members belong to that family and must be paid for in cattle by the father's family if the children are to be transferred to them."<sup>8</sup> "The *lobolo* is most emphatically understood to pay not only for the woman but for all her issue, so that a husband may claim restoration of the bride-price if his wife dies childless, while on the other hand, the offspring of a woman belong to her family provided the *lobolo* remains unpaid."<sup>9</sup>

Among the Negro two types of marriages exist fixed by the two main patterns of Negro society. "In Bantu tribes only two forms of marriage are

<sup>1</sup> EVANS-PRITCHARD, E. E. (1931) p. 39.

<sup>2</sup> TORDAY, E. (1929) p. 273.

<sup>3</sup> JUNOD, H. A. (1927) I, p. 101.

<sup>4</sup> LUTTIG, H. G. (1933) p. 90.

<sup>5</sup> JEFFREYS, M. D. W. (1934) p. 222.

<sup>6</sup> JEFFREYS, M. D. W. (1935)

<sup>7</sup> LIVINGSTONE, D. (1857) p. 623.

<sup>8</sup> JENNINGS, A. E. (1933) p. 29.

<sup>9</sup> LOWIE, R. (1921) p. 20.

in vogue: Matrilineal marriage and marriage of dominion . . . In matrilineal marriage the woman is the predominant partner and the man has a precarious hold upon the right to their children. In marriage of dominion, which is now much more common among Bantu, the man is supreme, and has sole right to the children."<sup>1</sup> However this "marriage of dominion" needs amplifying thus: "In patrilineal tribes, the daughters leave home on marriage and bear children for the families of their husbands, while the sons bring outside women into the family to bear children for it. In some tribes, therefore, the patriarchal family consists of all *male* descendants in the *male line* from the patriarch's father, (in some tribes this man's children by one or two of the senior of his secondary wives become separate families upon his death); such of the patriarch's father's female descendants in the *male line* as are unmarried and their sons and unmarried daughters, (if any); the sons and unmarried daughters of all women whose bride-price has come from the patriarchal herds, no matter what men have begotten these children, (if any woman, married out of this family, has been divorced by repayment of bride-price in full, she and her children pass back into its power; but a husband usually prefers to retain the children rather than reclaim the full bride-price); and all people of both sexes, together with their descendants, who have passed to the patriarch by inheritance, purchase, or capture and have not subsequently been disposed of by gift, sale, or bride-price."<sup>2</sup>

In this present article I propose to discuss only two points, marriage and *lobolo* in patriarchal, patrilocal societies among the Negro of Africa, because there are also Oceanic Negro, and furthermore to discuss *lobolo* only from the angle of the payer. I am not concerned with the activities of the bride's family in the handling of the *lobolo* they receive. All I am concerned with is the function of a *lobolo* payment so far as it affects the bridegroom's group.

The African Negro is divided linguistically

into two main groups, the Sudanic speaking Negro and the Bantu speaking Negro.

"In ethnology the only intelligible definition of a Bantu is a full-blood or half-blood Negro of Bantu speech; and from the physical standpoint no very hard and fast line can be drawn between the northern Sudanese and southern Bantu groups, considered as two ethnical units."<sup>3</sup>

"The great bulk of the native population of South Africa is made up of the tall, brownish-black Bantu-speaking Kaffirs, Basutoes, Zulus, etc., generally grouped as Bantu Negroes."<sup>4</sup>

### MARRIAGE NOT A CONTRACT

In the course of this article extracts will be given from authorities who regard marriage as a contract. I do not, and in order to make clear to those who hold views different from my own I give herewith my grounds for not regarding marriage as a contract.

The attitude of lawyers in different lands on this matter is important. I shall give three, one from Holland, one from France and one from South Africa. "The oft discussed problem whether marriage is a contract is in our civil law merely a question of definition. If by contract is meant the mutual acceptance of the legal consequences of marriage, then marriage certainly falls into that category. If one takes the word to mean an agreement creating an undertaking, then marriage is not a contract."<sup>5</sup>

The Dutch law courts have accepted the definition that marriage creates an undertaking and is therefore not a contract. The French lawyers are clearer on the issue. "L'idée que le mariage est un contract est rejetée par beaucoup de gens. Chez la plupart, c'est l'effet d'une préoccupation religieuse, parce que, dans la doctrine canonique, l'institution du sacrement de mariage a absorbé le contract. Mais la loi, qui statue pour un peuple pratiquant des religions différentes et comprenant

<sup>1</sup> WILLOUGHBY, W. C. (1923) p. 102.

<sup>2</sup> WILLOUGHBY, W. C. (1923) p. 86, 87.

<sup>3</sup> QUIGGIN, H. L. & HADDON, A. C. (1920) p. 86.

<sup>4</sup> DRENNAN, M. R. p. 51.

<sup>5</sup> SCHOLTENS, P. (1923) p. 183.

même des personnes qui n'en pratiquent aucune, ne peut pas faire sienne une conception religieuse. Chez quelques autres, l'erreur tient à une notion inexacte de la nature des contrats. Voyez notamment Beaussire (*Principes du droit*, p. 212-13), qui s'imagine qu'un contrat est un acte essentiellement arbitraire dans toutes ses parties, alors qu'il n'en est aucun pour lequel certains éléments, certaines conditions ou certains effets ne soient imposés par la nature ou par la loi.

"Une confusion, facile à éviter, est quelquefois commise. On entend par mariage *l'état matrimonial*, la condition sociale des époux. Il faut bien prendre garde que le mot *mariage* a deux sens: on s'en sert pour designer tantôt la convention ou volonté de vivre ensemble, tantôt le genre de vie qui en résulte. Pris dans le second sens, le mariage n'est pas un contrat, c'est un état; on dit qu'il finit; qu'il est heureux ou malheureux, etc.; mais quand on le prend dans le premier sens, on dit qu'il se conclut, qu'il se brise, qu'il est valable ou nul, toutes choses qui ne sont intelligibles que pour les contrats. C'est donc jouer sur les mots que de dire: le mariage n'est pas un contrat, parce que c'est un état de vie; cet état de vie naît d'un contrat qui s'appelle aussi mariage."<sup>1</sup>

The attitude of the Courts in South Africa can be seen from the following extract. "But we are promptly warned that 'marriage is not a mere ordinary private contract between the parties' (*Weatherley v. Weatherley Kotze's Rep.*, p. 71). In *Hyde v. Hyde* (L. R. P. and D. 133) Lord Penzance reflected: 'Marriage has been well said to be something more than a contract, either religious or civil — to be an institution.' Brouwer (2.27.24.) describes marriage as an *actus l'gitimus: nullam conditionem, nullamque temporis vel minime moram admittat.*" At the end of the development of Roman Dutch Law in Holland *Van der Linden* remarked: 'If, quite unbiassed by superstitious notions we consider the nature of marriage, its objects and consequences, we cannot escape surprise at the fallacy of these authorities who classify marriage as a civil con-

tract.' (K. H., b. 1.2.2. *in notis*; cf. De Blecourt, *Kort Begrip*, p. 79). Savigny (*System*, Vol. 8, sec. 379 A. 'Ehe') states that the analogy between marriage and an obligatory contract is false as marriage has nothing in common with obligatory contracts. If we compare marriage with a contract more distinctions than similarities leap to the mind. It would be sounder to say that marriage is a juristic act *sui generis* like adoption, adiaption, making a will, or surrendering one's estate and that nothing but confusion can result from applying to it the rule which governs a different institution."<sup>2</sup>

The law reports of America, Britain and other countries bristle with similar statements. Such then is the legal attitude towards human marriage.

The Roman Catholic doctrine, however, teaches that Christian marriage is a contract: "Moreover, marriage is a contract (The Roman jurists . . . do not speak of marriage as a contract. It is, however, expressly so called by Rogerius: 'Audivimus in superioribus de contractibus rerum . . . nunc audiamus de contractibus personarum, i.e. de matrimonio.' *Summa Codicis*: in A. Gaudenzi. *Bibl. Jur. Med. Aevi.* (1888) t. i, p. 89. The schools both of civil and canon-law accepted the doctrine). . . . What, it was asked, is the precise object of the contract? . . . The object of the contract, it was answered, is the right which each possesses over the body of the other. In marriage there is a reciprocal donation of that right. It may never be exercised but it exists all the same; and apart from it there is no marriage. It was further concluded that matrimony being a contract, it could be carried out by proxy acting on behalf of his principal, by a message or even by letter. . . . Under the present code of canon-law . . . it is no longer possible to contract a marriage by message or letter; and if a proxy is appointed, a formal document of appointment is required."<sup>3</sup>

The contractual aspect of marriage was accepted by English law up to the end of the 18th Century, *vide* Lord Stowell's judgement of 1790. "It (marriage) is a contract formed with a view, not only to the benefit of third parties; but to the

<sup>1</sup> PLANIOL, M. (1925) p. 249.

<sup>2</sup> VAN DER HEEVER, J. A. in *Frankel's Estate v. The*

*Master South African Law Reports.* (1950) Vol. I, p. 249. (Appellate Division). <sup>3</sup> JOYCE, G. H. (1933) p. 67-9.

benefit of their common offspring, and to the moral order of civil society. To this contract is super-added the sanctity of a religious vow."<sup>1</sup> Nevertheless, following the lead of the lawyers who know what they are talking about rather than the theologians who merely dogmatize, marriage is for me a way of life, a mode of living, not a contract, and I may add the contractual aspect of marriage is not apparent in the Negro religious ceremonies. No one could be married by proxy. The persons concerned had to proceed through the religious ceremony.

It is true that an African writer, Danquah writing of his own tribal custom, those of the Akan on the Gold Coast, writes of marriage as a contract. "From the purely legal point of view it seems true to say the union of man and woman under Akan marriage law is a 'physical' and not a 'spiritual' union, a contract, not a sacrament."<sup>2</sup> Because the union is not a sacrament does not therefore make it a contract. Mr. Danquah gives no other grounds for regarding marriage as a contract, other than that it is not a sacrament.

### LOBOLO IN MARRIAGE

For a start I would draw attention to the contradictory attitudes adopted by some writers on *lobolo*, namely that *lobolo* is marriage. Thus the Rev. D. Shropshire, with long experience of Africans, writes: "There is no marriage in Pondo law without *lobolo*, since if it does not pass the children can be taken away."<sup>3</sup> Mrs. Krige writes: "*Lobolo* is marriage and to the Southern Bantu, marriage without *lobolo* is inconceivable."<sup>4</sup> "No marriage was valid without *lobolo*."<sup>5</sup> "Without *lobolo* cattle there can be no marriage."<sup>6</sup>

"The chief element, and one of the essentials to the validity of a customary union, is the delivery by the prospective husband or his people

<sup>1</sup> HUGGARD, I. p. 118.

<sup>2</sup> DANQUAH, J. B. (1928) p. 153.

<sup>3</sup> SHROPSHIRE, D. W. T. (London: 1946) p. 23.

<sup>4</sup> SCHAPERA, I. (London: 1937) p. 113.

<sup>5</sup> MARQUARD, L. and STANDING, T. G. (1939) p. 49.

<sup>6</sup> VAN TROMP, J. (1948) p. 77.

<sup>7</sup> WHITFIELD, G. M. B. (1948) p. 88.

on his behalf, of dowry, *lobolo*, *bohali*, *bogadi*, etc., (as the transaction is variously termed among the South African Natives) to the guardian of the bride elect or his representative, who accepts it."<sup>7</sup>

"Though the payment of *lobolo* is essential to a legal marriage, the contract is effective from the time of betrothal."<sup>8</sup>

"It is of particular importance that cattle are used for the payment of the bride-price by the family of the bridegroom to that of the bride, which is necessary in most of the tribes to legalize marriage."<sup>9</sup>

"Though no marriage would be valid without the exchange of bride-wealth . . . it is not true to say that wives are bought as slaves are bought, nor that they are inherited as property is inherited."<sup>10</sup>

Dr. van Warmelo and Mr. W. M. D. Phophi write: "Only payment of the *thaka* (*lobolo*) demanded establishes a marriage."<sup>11</sup>

Mr. Harries writes: "The payment of *lobolo* is the very foundation upon which the institution of marriage according to native law rests."<sup>12</sup>

Professor Schapera is emphatic that *lobolo* legalizes marriage: "Marriage was legalized by the transfer to the wife's people of *lobolo* (Nguni) or *boxadi* (Sotho), a material consideration generally taking the form of cattle, or in exceptional instances, as among the old B-thonga, of some such object as iron hoes . . . its (*lobolo*'s) primary function, however, seems to have been to legalize the marriage and its resultant offspring . . . The payment of, or undertaking to pay, *lobolo* or *boxadi* was an essential element of any normal Bantu marriage."<sup>13</sup>

So far all these assertions as to the role of *lobolo* in a Negro marriage have been by Europeans. Here is one by an African Chief, Cutale, giving evidence before the Government Commission of 1881 into Native laws and customs said in answer to the question: "How do you know

<sup>8</sup> PIDDINGTON, R. (1950) p. 342.

<sup>9</sup> HAILEY, LORD. (1939) p. 22.

<sup>10</sup> SELIGMAN, C. G. and B. Z. (1932) p. 175.

<sup>11</sup> VAN WARMELO, N. J. and PHOPHI, W. M. D. (1948) I, p. 99.

<sup>12</sup> HARRIES, C. L. (1929) p. 3.

<sup>13</sup> SCHAPERA, I. (1934) pp. 8, 9.

when a woman is married to a man; what forms the ceremony and completes the marriage?"<sup>1</sup> replied: "The payment of cattle is sufficient."<sup>2</sup> Further questioning threw doubt on the chief's reply.

This opinion that *lobolo* is marriage is not held by many European investigators.

### LOBOLO NOT NECESSARY FOR MARRIAGE

There is a band of persons, mostly Colonial Administrators and judges, who have had continuous, first-hand experience of native customs and with whom I am in agreement. Such persons realize that *lobolo* is not necessary for a valid Negro marriage. Mr. Posselt, a well-known authority on Native Law and Custom in Southern Rhodesia distinguishes clearly between marriage and *lobolo*. "The delivery of *lobolo* is not an essential part of a valid native marriage, but it is the very essence of the transfer of the custody of the children to their father; all other considerations, rights or obligations are only ancillary."<sup>3</sup> Mr. Justice Vincent gave a judicial verdict on the non-essential aspect of *lobolo* in a native marriage. "Judge Vincent in *Macherje v. Kumaka* (S. Rhodesia) gave a legal definition of *lobolo*, when he said that the giving and receiving of *lobolo* cattle is merely a contractual incident of native marriage."<sup>4</sup>

Mr. Bullock who was for a number of years president of the Native Court of Appeal, Southern Rhodesia, writes: "*Lobolo* might play a part in the arrangements long after marriage when it might accrue from a daughter born of it and be transferred to the father-in-law to free the *mu-gari* (serf) from his obligations, but it cannot be said that *lobolo* has been arranged at the time of marriage."<sup>5</sup>

The Rev. Willoughby for many years a missionary among the Bantu writes: "Marriage, too, is an occasion for worship. Some regard the

sacrifice of an ox to the spirits as the essence of the ceremony; some content themselves with placing sacrificial marks on the pots in which the feast is cooked; some offer (but do not sacrifice) the bride-price to the spirits; while others regard a prayer offered on the threshold of the new home as being the heart of the whole ceremony."<sup>6</sup> Not a word is there about the need for *lobolo* to validate the marriage.

Much the same distinction is found among the Dinka. "When a (Dinka) suitor has given his prospective father or brother-in-law a certain number of cattle demanded for the purchase of the daughter, he is forthwith allowed to have intercourse with her, and no further payment need be made until the birth of the first child, when the remainder of the purchase price has to be immediately forthcoming. Here we have further intricacies, because, according to Dinka law, a man can divorce a sterile woman after accusing her publicly before the elders of the tribe. Should it then be discovered that the accusation is correct, the temporary husband can not only refuse to pay the remainder of the bride-price, but he can also demand the return of the first instalment of cattle. The girl then becomes free to marry again, but if it happens that a second husband successfully accuses her of sterility no cattle can be demanded by the relations for a third marriage. If there should be children by this last union they do not belong to the husband, but are the sole property of the wife and can, consequently, be sold by her."<sup>7</sup>

There is no question about the validity of this third marriage. Actions for adultery will hold but because no *lobolo* has been paid to transfer the status of the children from the mother to that of the father, the children remain with the mother. In other words marriage and *lobolo* are recognized among the Dinka as two distinct institutions.

Molema writing in 1917 of his own people, the Bantu, draws a distinction between marriages with and without *lobolo* and calls *lobolo* merely

<sup>1</sup> CUTALELE, *Report of Cape Commission on Native Law*. (1883) p. 440. <sup>2</sup> POSSELT, F. W. T. (1926) p. 52.

<sup>3</sup> BULLOCK, C. (1927) p. 350.

<sup>4</sup> BULLOCK, C. (1950) p. 275.

<sup>5</sup> WILLOUGHBY, W. C. (1923) p. 72.

<sup>6</sup> DOMVILLE-FIFE, C. W. (1927) p. 130.

an adjunct to marriage. "An important and constant adjunct to marriage was the custom known as *uku-lobola* by the Xosa-Zulu and *bogadi* by the Bechuana people . . . It is also true that a woman who was married according to the *lobola* custom was, for that very reason, better respected by her neighbours than she would otherwise have been."<sup>1</sup>

Thus, there is evidence for two schools of thought, one that *lobolo* is the central feature of a marriage, that "no marriage was valid without *lobolo*"; the other, that *lobolo* is not necessary for a valid marriage. Dr. Mayer, sociologist to the Kenya Government, holds both these views simultaneously. In a recent monograph on bride-wealth among the Gusii he opens with the remark, "the cattle transfer which legitimizes the union of a man and woman is in Gusii custom conducted by the fathers of the two parties." Later on he concludes that the "bride-wealth" does nothing of the sort. "The living together of a man and wife, and their sharing of the daily routine of the homestead, is regarded as a desirable and natural consequence of marriage, but the bride-wealth system as such does nothing to secure it."<sup>2</sup>

Professor Evans-Pritchard had also come to the conclusion that *lobolo* had nothing to do with stabilizing a Nuer marriage. "I am prepared to say definitely that the stability of Nuer marriage rests on quite other foundations than payments of bride-wealth."<sup>3</sup>

I am in agreement with these views and opposed to those of Professor Schapera who writes. "The *lobolo* transfer also served directly to make marriage a more stable institution, in the sense that because of it neither husband nor wife would lightly offend or abandon the other."<sup>4</sup>

It is my purpose in this article to clear away these misconceptions, these contradictory viewpoints, on marriage and on *lobolo*. I shall achieve my purpose by showing among the patriarchal, patrilocal Negro, that *lobolo* is an institution independent of, and distinct from, marriage and that each can exist independently of the other simultaneously in one and the same Negro society.

## MARRIAGE

A definition of this institution is most essential for what follows. Westermark defines marriage as follows. "Marriage is a union between a man and a woman that is sanctioned by society through the performance of a certain ceremony. It may be said that social recognition is everywhere a characteristic of marriage as a human institution."<sup>5</sup> This social recognition is achieved, as will be seen by the marriage ceremony. I would add that the union has as its aim the procreation and rearing of children. Linton's definition runs as follows: "Marriage is a socially recognized union between persons of opposite sex. It differs from non-marital sexual relationships primarily through this factor of social recognition and through the increased duration in time which such recognition assumes. It derives its importance as a social institution from the fact that it provides a stable foundation for the creation and organization of a conjugal group."<sup>6</sup> The family as a consequence of creating a conjugal group is a universal human institution and is regarded as the earliest human social institution. Marriage thus becomes a universal institution in the only culture simultaneously common to all mankind, i.e. in the food-gatherers' culture. It is thus the basic institution of savagery. Marriage is therefore an earlier institution than *lobolo* which is a transfer of surplus wealth from the bridegroom's group to that of the bride. Such surpluses could be consistently produced only after man had changed from a food-gathering economy to that of a food producing one. But food production is the characteristic of the neolithic age whereas food gathering is characteristic of the paleolithic. Hence marriage can be regarded as a product of paleolithic times and *lobolo* of neolithic. It is noteworthy that the neolithic age began in the Fertile Crescent and the earliest records of *lobolo* are also found there. Marriage as a social institution is found in all human societies but *lobolo* is not. "It is worthy of remark that the

<sup>1</sup> MOLEMA, S. M. (1920) p. 124.

<sup>2</sup> MAYER, (1950) p. 6.

<sup>3</sup> EVANS-PRITCHARD, E. E. (1947) p. 185.

<sup>4</sup> SCHAPERA, (1934) p. 8.

<sup>5</sup> WESTERMARK, E. (1929) p. 5.

<sup>6</sup> LINTON, R. (1936) p. 173.

most primitive tribes of mankind such as the Veddas, the aboriginal inhabitants of Kola and Kolroor, of the Aru Archipelago, who live in trees or caves, and apparently also the Andamanese, are in the habit of marrying without making payment for the bride,<sup>1</sup> and I may add, so do the Bushmen of South Africa, and the Eskimo of the Arctic. These peoples are still in the savage or food-gathering state, they neither cultivate crops nor keep domesticated animals.

The social structure of societies will reveal differences in what constitutes marriage. There is, however, one ground common to all societies, namely the status of children born as the result of non-recognized alliances, i.e. of children who are the consequences of promiscuity. Promiscuity may be defined as the gratification and satisfying of the sexual appetite and has consciously no further object or intention and may take place between any individuals of opposite sex.

As a general rule in human societies the child of promiscuity goes with its mother's group. Gluckman points to exceptions to this rule. "Among the Lozi a child should go to its genitor. . . . An illegitimate child goes to its genitor independently of payment."<sup>2</sup> He also points out that a similar rule exists among the Hehe, Bena, Kikuyu and Ganda, and, I may add, among the Bushmen.

Thus, in both our own society and generally in that of the Negro, the chance begetter has no rights over, or custody of, the child. Our own society through affiliation orders, actions for seduction and maintenance, may make the begetter responsible for the material welfare of the child till it is sixteen<sup>3</sup> but the African society does not.

The point is, that early societies recognized that the biological nexus between mother and child created a powerful psychological bond that was fundamental to society. Until this basal bond was broken culturally by such an institution as that of *lobolo*, the child remained with its mother's group. Numerous examples follow of

valid marriages on this basic psychological pattern, where, after marriage, the children remain with the mother's group unless the nexus is broken by the payment of *lobolo*. Thus the Rev. A. E. Jennings writes that among the Sechuana, "all children born to a family through its female members belong to that family and must be paid for in cattle by the father's family if the children are to be transferred to them."<sup>4</sup>

The realization that children naturally belong to the mother's group and only culturally to the *lobolo* payer's group causes members of our culture to refer to children on whom no *lobolo* has been paid as illegitimate, a term quite unsuitable. Professor Doke writes of the Lambas as follows: "Illegitimate children suffer no disability; they are treated as orphans who have no father, and are accepted as clan members by the members of the mother's clan, to which they naturally belong."<sup>5</sup>

As the children naturally belong to the mother's clan, the transfer can be effected by the payment of *lobolo*. The point that illegitimacy does not arise in Bantu society and that the status of children is determined by either the non-payment or payment of *lobolo* is stressed by Mr. Whitfield: "There is no question of legitimacy of children involved. It is in Bantu law merely a matter of transfer of reproductive powers and products of a female that is involved. The children 'belong' to one or other group and their rights are governed by a law from the passing of *lobolo* or *bogadi* or otherwise. (Mocumi v. Mocumi and Another. (1944) N. A. C. (C. and O.) p. 107.)<sup>6</sup>

Summing up the *mala*, i.e. *lobolo* system of the Bavenda, Whitfield writes: "Nevertheless, it is desirable to have in mind at the outset the conception expressed in the proverb that: 'Cattle beget children', i.e. that for a consideration in cattle a family buys from another family one female unit of potential reproductive power, and that all the vagaries of the *mala* system lie in the saying that: 'The children are where the cattle are not', i.e. that if this potential unit does

<sup>1</sup> RIDGEWAY, W. (1931) II, p. 344.

<sup>2</sup> ENCY. BRIT. (14th ed.) I, p. 279.

<sup>3</sup> GLUCKMAN, M. (1950) p. 189.

<sup>4</sup> JENNINGS, A. E. (1933) p. 29.

<sup>5</sup> DOKE, C. M. (1931) p. 136.

<sup>6</sup> WHITFIELD, G. M. B. (1948) p. 212.

not fulfil her functions she must be replaced by another unit who does; and that in cases of disagreement of legal issues of any kind involving the *mala* system, either side can claim only one possession — either the woman and her children born, or unborn, or the cattle."<sup>1</sup> Here it is evident that it is the functioning of *lobolo* that is being discussed, not marriage, and it is also clear that it is *lobolo* that buys or begets the children.

This fact that under natural conditions a woman's child belongs to her group and is transferred to another group through cattle payment was acknowledged by Mr. McLoughlin, who, as President of the Native Appeal Court, said: "By nature the progeny of a woman accrue to her father's group and are members of his group and tribe for religious and political purposes. The term 'illegitimate' is not applicable to them; they are natural products and acquire residuary succession rights as the most junior members of the group. These rights and duties are transferred by Native Law to another group only on contraction of a valid customary union whereby the woman's group receives the *lobolo* from the other group and transfers the natural right to the woman's productive power and her progeny to the group providing the *lobolo*. Thereafter all progeny of the woman belong to the latter group by whomsoever begotten and are all 'legitimate' in the Common Law sense, being children of a valid union. 'Cattle beget children' is the maxim in Native Law."<sup>2</sup> Much the same point of view is held by the Tembu where in Pondoland, "the universal rule of basic Native Law that until her *lobolo* is restored a widow's progeny always accrues to the late husband's group, is travestied by the assertion of the Pondo assessors that such children can belong to the putative father, if he pay cattle for them, and if he does not, then the husband's heir, if he pay cattle for them, at a time when the woman's father still holds the dowry for her which transferred her reproductive rights to the husband's group."<sup>3</sup>

Marriage is a feature of all human societies: *lobolo* could only arise as an institution after

<sup>1</sup> Id., (1948) p. 213. <sup>2</sup> WHITFIELD, C. M. B. (1948) p. 52. <sup>3</sup> Id. (1948) p. 54.

certain groups of people in the Fertile Crescent had discovered how to domesticate plants and animals and thus produce surplus wealth. It is the use of surplus wealth in the purchasing of the right to the woman's children that constitutes the function of *lobolo*: it has nothing to do with, nor has it developed out of, marriage. *Lobolo* is an economic institution — marriage a social one: that the two institutions are often confused is unfortunately only too true.

The difference between *lobolo* and marriage is simple. *Lobolo* is an item in certain human cultures and in them it is part of man's learned behaviour. *Lobolo* satisfies no primary biological need, marriage does. Marriage is rooted in the satisfaction of a primary biological need and is common to all men. *Lobolo* sprouts from certain patterns of culture. A culture has first to exist and then *lobolo* may develop in it but marriage exists without *lobolo* and could exist without culture. The motivation behind marriage is biological; that behind *lobolo* is cultural. Consequently there is no inherent connection in any society between marriage and *lobolo*. *Lobolo* is an oral arrangement, a product of speech.

#### MARRIAGE, A RITE OF PASSAGE

In order to show that *lobolo* plays no part in a marriage a brief examination of marriage ceremonies is necessary. "A. van Gennep has shown that almost universally there is a general similarity between the character and the sequence of the rites concerned with the great events of life — initiation, marriage, death and the like."<sup>4</sup> "He showed that all such ceremonies . . . could be divided into three consecutive parts, always occurring in the same order . . . separation, transition and incorporation."<sup>5</sup>

The Rev. James remarks: "A wedding is a 'rite de passage' and to pass into a new condition or to do anything for the first time is considered to be attended with danger . . . Marriage is thus the

<sup>4</sup> HADDON, A. C. (1934) p. 130.

<sup>5</sup> CHAPPLE, E. D.; COON, C. S. (1942) p. 484.

religious act by which, from the most primitive times, the natural inclinations of man and woman, and vice versa, are satisfied in a lawful manner . . . The essence of marriage being the 'joining together' of man and woman, many ceremonies symbolize the union by the joining of hands and the tying together of garments . . . Eating food together produces what Mr. Crawley calls the *ngia ngiampe* relation, and thereby constitutes the strongest of all ties. Food produces flesh, and therefore the mutual inoculation by the same food makes the two 'one flesh'. This conception is brought out in a highly spiritualized manner, in the Christian Church by the Mass forming part of the marriage ceremony in both the Latin and English rite . . . Marriage in Rome included a ceremonial meal."<sup>1</sup>

Junod draws attention to the existence of the communal meal as the hard core of the marriage ceremony. "We find the explanation of some other ceremonies when we apply to them the theory of the *Rites of passage*. For both bridegroom and bride, there is in fact passage to a new condition of life. They pass from the position of single to that of married persons. Hence the part taken by their best friends and by the bridesmaids, from whom they are separated by their marriage. For the bride there is passage from one family to another, from one village to another.

I cannot say that I have found distinct *separation* and *marginal* rites but aggregation (i.e. incorporation) rites are numerous. The aggregation rites are first of all the common participation in the flesh of the oxen during the feasts. Nothing makes Natives more friendly towards each other than to eat meat together."<sup>2</sup>

Mrs. Krige emphasizes that a Zulu marriage is a rite of passage: "Marriage among the Zulu can be called a *rite de passage* for the couple concerned, by means of which both are transferred from the group of the unmarried to that of the married. For the girl, however, it is a double transition, for she has to be loosened from her own group and incorporated into that of her husband. Hence the separation rites, such as

the wearing of a veil, the seclusion of the girl during the greater part of the marriage ceremonies, her quiet restrained behaviour, and finally the series of aggregation rites by means of which she is incorporated into the group of her husband."<sup>3</sup> Mrs. Krige then goes on to show that these aggregation rites consist of a number of feasts.

### THE MARRIAGE FEAST OR COMMUNAL MEAL

The marriage feast or communal meal appears to be the central feature where consumption makes the man and woman, husband and wife.

Molema, writing of his own Bantu customs, says: "When a woman was about to get married, she was kept in seclusion for a number of days before the date of the marriage ceremony . . . (on the appointed day for the ceremony the families met). After the dance, feasting was begun on a grand scale . . . "<sup>4</sup>

The native is also explicit on this point as appeared in the Report of the Commission on Native Law and Customs of the Basuto presented to the House of Assembly, Cape Town, in 1873. Among the natives who gave evidence were descendants of the great Moshesh, namely chiefs G. Moshesh and Sofonia Moshesh: "Marriage either takes place with the payment of cattle or sometimes without, but it depends on the wish of the parents of the girl . . . Those who marry without cattle do so by private arrangement between the parents of the parties . . . A marriage is completed when the father has slaughtered an animal or animals as *mafura*, with the fat of which the bride and bridegroom are anointed, and the bridegroom has the gall bladders put round his wrist."<sup>5</sup> Note the implication of a marriage feast by the slaughtering of the animals.

Professor Schapera also draws attention to the central *rôle* that a meal plays in a Bantu marriage: "But in details of arrangement and attendant

<sup>1</sup> JAMES, O. E. (1917) pp. 63, 60, 20. <sup>2</sup> JUNOD, H. A. (1927) I, p. 123. <sup>3</sup> KRIGE, E. J. (1936) p. 120.

<sup>4</sup> JAMES, O. E. (1917) p. 63, 60, 20.  
<sup>5</sup> 1883 Report. Appendix B, p. 23.

ceremonials marriage customs varied widely. Generally speaking, however, they were accompanied by festivities first at the girl's home and then at the boy's home, in the course of which cattle were sacrificed to the ancestral spirits of the two families concerned."<sup>1</sup>

Among the Pondo the difference between marriage and *lobolo* is clear cut: "There are different modes of performing the rites of marriage which is called *Ukazeka* or *Ukwenda*. (Here follows a description of the marriage of a chief's daughter. Then comes the description of a marriage of a commoner's daughter.) One is for the lover of any woman, except a chief's daughter, to call a number of young men who go and carry the girl away either in the field or at her kraal to his home. As soon as they get there a sheep or goat is killed for the carriers, who are bound to watch this woman day and night till her friends come to demand dowry. When they do come, another beast, sheep or goat as the case may be, is killed and they eat that with her which is a token that from hereafter she remains as a wife to that husband, and must partake of their milk, because a woman never drinks the milk of her husband's kraal unless some animal is killed for the purpose."<sup>2</sup> Note the communal meal that makes the woman a member of her husband's kraal and able to drink milk there. It is not the *lobolo* that does this.

The distinction was apparent so long ago as 1597 when the Roman Catholic Friar, Joanno dos Santos, was in Sofala. He draws a distinction between *lobolo* and marriage. *Lobolo* is for him a buying of the woman, whereas the marriage is characterized by a meal: "The Cafres buy of the parents their wives, for Kine, Clothes, or otherwise according to their abilities. And therefore they which have many daughters are rich. If any mislike his wife, he may returne to him that sold her, but with losse of the price payde; and the parents may sell her againe to another husband. The wife hath no liberty to forsake her husband. The ceremonies of marriage are dances, and feastings of the neighbours; every invited

guest bringing his present of Meale, mais, In-hames, Fitches, or other victuall for that dayes expenses."<sup>3</sup>

The Rev. Jennings who worked for years among the Tswana draws attention to the significance of a wedding feast in a Tswana marriage and indicates that *lobolo* plays no part in it: "In due course the bridegroom's family sends a message to the bride's family that they are to get ready for the marriage feast called 'The feast of the Molato,' i.e. the feast of the Debt, to which all the relatives come. (After the feast the bride and bridegroom retire to the bridal hut and the marriage is consummated.) The bride continues to live at her own place till the arrival of the first child of the marriage and sometimes longer and the matter of paying the *Bogadi* cattle is not mentioned till this time. Even then it need not be paid in full, as *Bogadi* by instalment is common amongst the poorer people, indeed, is sometimes paid when the children are grown up."<sup>4</sup> Yet no one would hint that the alliance was one of fornication and not of marriage for the simple reason that fornication carries no marriage penalties, it carries other social ones, whereas marriage carries adultery damages.

The Natal Code of 1875 recognizes the need of a marriage feast as essential in a native marriage: "It is essential to a valid marriage according to native rites, where the woman is not captured in war, that when the intended wife is other than a widow or divorced woman there shall be a right to a payment by or on behalf of the intended husband (hereinafter for this purpose called the husband) to the person (hereinafter for this purpose called the father) having the giving away in marriage of the intended wife, also the consent of the father and of both the parties, and a marriage feast at which are present the husband or a representative appointed by or for him for the purpose, and the intended wife, and the official witness . . ."<sup>5</sup> The bench also takes cognizance of the validating effect of the communal meal: "The (Transkei native) marriage

<sup>1</sup> SCHAPERA, I. (1934) p. 7. <sup>2</sup> 1883 Report. Appendix I, p. 408. <sup>3</sup> PURCHAS. (1905) IX, p. 214.

<sup>4</sup> JENNINGS, A. E. (1933) p. 20.

<sup>5</sup> 1883 Report. Appendix B, p. 25.

is then celebrated with some ceremonies, usually of a festive character."<sup>1</sup>

Father Brodrick shows that among the Wazeruru the central feature of the *pswitz ka musha* marriage custom is a communal meal: "A cooked fowl is produced and divided down the middle by the *mbinga* who has arranged the match; part is eaten by the representatives of the two families, and part is given to the contracting parties who retire to eat it in a hut previously prepared by the girl's mother. This hut is in reality the bridal chamber . . . the parties concerned are in the eyes of their families and of the community henceforth Man and Wife with a certain limitation."<sup>2</sup> The limitation is that the children belong to the mother's group.

In the customs of the Chagga of Kilimanjaro the two institutions of marriage and of *lobolo* though existing simultaneously are kept distinct and one can thus perceive that marriage is one institution quite distinct from, and independent of, that of *lobolo*. It is also clear that a communal feast celebrated by initiates, i.e. married persons, sets the seal on what is marriage, i.e. after this feast the couple are married, are man and wife.

The marriage "feast at the bridegroom's hut commences at three in the afternoon and is kept going until eleven o'clock of the following morning. But the participants in the night-time celebrations are only married men and women, unmarried persons are excluded altogether . . . It is somewhat difficult for Europeans to know at what point of the whole series of marriage celebrations the couple may be considered to become man and wife. While the Chagga generally refers to the celebration described just as the actual marriage, there are several ceremonies to follow . . ."<sup>3</sup>

So much for the marriage which, as the Wachagga declare, comes into being as a result of the communal feast; now comes the matter of *lobolo* which plays no part in the marriage. On the wedding day, the "Mkara (the bestman) makes three bundles of sticks: one bundle represents the gifts of beer and so forth which he

delivered with his own hand, the second the count of what remains to be given in the way of food and beer, while the third bundle represents the dowry animals to be given later . . . Nothing further is paid in dowry until children are born to the couple . . . Actually, demand for dowry should not be made until one of the children is married . . . If the wife bears only one child, her father can claim no more (than one heifer); if two children are born, he has a right to a second heifer; but however many children there may be, no more can be claimed. It is not decent to make demand for dowry payments with undue haste. In respectable families they may be left unclaimed during the life-times of husband and wife to be recovered from their heirs."<sup>4</sup>

Hence in the case of a barren wife no *lobolo* is paid but the marriage is nevertheless a valid one. Thus among the Chagga the payment of *lobolo* has nothing whatsoever to do with a valid marriage, it does not validate it and is not necessary for it.

Among the Yoruba of Southern Nigeria one finds that the "*igbe yawo* or marriage is the last ceremony and is performed thus: a day which is observed as a feast day by both families is fixed for the wedding . . . A man may take his wife before paying the dowry, but the dowry must be paid as soon as possible."<sup>5</sup>

Dr. Meek also notes that a communal meal is the essential feature among the pagan tribes of Northern Nigeria. "Among the pagan tribes the wedding is generally marked by a feast . . . Among the Ataka and Kagoro the consumption of a dog is the essential feature of the marriage ceremony . . . The Margi also observe sacrificial rites on the weddingday; the bridegroom ceremonially killing two goats, which he presents to the bride's family. The Mambake bridegroom slays a sheep or bull, and the Tangale bridegroom offers a goat through the priest that the god may cause the marriage to be fruitful."<sup>6</sup>

Writing of marriage in general terms Sumner and Keller stress the importance of a feast. ". . . primitive marriage needs publicity quite

<sup>1</sup> PER MAASDORP, J. in *Nbono and Manoxoteni* (1891) 6, E.D.C. 62 (Cape Colony).

<sup>4</sup> DUNDAS, C. (1924) pp. 234, 240, 241.

<sup>5</sup> AJISAFE, A. K. (1924) p. 54, 56.

<sup>6</sup> MEEK, C. K. (1925) II, p. 99, 100, 102.

<sup>2</sup> BRODRICK, G. E. P. (1945) p. 50.

<sup>3</sup> DUNDAS, C. (1924) p. 236.

as much as does civilized marriage. Hence the recourse to ceremonial. The more witnesses there are, and the more deeply the occasion has been impressed upon their minds, the more reliable the record and the more secure the rights that flow out of the new relation. An elaborate feast with plenty of strong liquor will raise up clouds of eagerly reminiscent witnesses to the fact that woman *B* is married to man *A* . . . The wedding was, then, a notification to all that such a woman belonged to such a man and was taboo to all others. It was of the utmost importance to societal peace and order that there should be a rite by which she would be known to have acquired this status . . . In short, it is the ceremony that distinguishes marriage from non-marriage. By the ceremony the parties enter into a status defined in the mores, carrying with it duties, rights . . . at the hands of society . . . Instances of a total absence of ceremonial at entrance upon the status of wedlock — cases where the union of man and woman gets no publicity at all — are virtually non-existent . . . In ceremonial of all sorts, food and eating play a prominent part . . . there are still funeral baked meats and wedding festivals: one of the mysteries of unification with deity takes the form of eating together."<sup>1</sup>

In many tribes a ceremonial drinking may take the place of a ceremonial meal: "The same symbolical act of exchanging saliva is an essential part of the marriage ceremony in the Melisa clan of the Wachagga. Here, first the bridegroom lets his saliva flow into a cup of milk which is given to the bride to drink and then he drinks hers in a similar manner. 'Thus the communion with his clan is established and the bride becomes a member of it.' Ceremonial drinking plays an important part in all rites connected with marriage. . . . Among the Bakongo, the rite which is essential at every phase of the protracted marriage ceremonies between free people is the solemn drinking of the palm-wine of marriage."<sup>2</sup>

It seems that a communal meal or drinking is the essential central feature of most marriage ceremonies and note that *lobolo* plays no part in

them. As marriage ceremonies are universal and *lobolo* is not, it follows that man married and had marriage ceremonies long before the institution of *lobolo* was developed in certain areas. Were these marriages invalid because *lobolo* had not been invented? If not, how then does the invention of *lobolo* make them valid? It is absurd to think that people invented the idea of *lobolo* because they wanted to get married, or to render valid a marriage.

Dr. Pearsall, after a study of "bridewealth" in East Africa came to the same conclusion: "The present study cannot demonstrate any reason for the origin of the bridewealth complex. That the custom arose for the sole purpose of stabilizing or legalizing marriage seems absurd, though, once established it may well have served as a stabilizer."<sup>3</sup>

### MARRIAGE WITHOUT LOBOLO

Instances have already been given of marriages without *lobolo*; hence *lobolo* has no function in a marriage ceremony. In other words it has nothing to do with marriage and did not derive from it. Mrs. Krige makes it quite clear that a valid marriage can exist without any *lobolo* payment when she describes the *ethula* custom of the Zulu: "The loss of a member disturbs the equilibrium between the two groups, and this had to be set right by giving in return something else of great value in the lives of the people. Hence the *lobolo* or passing of cattle from the group of the boy to that of the girl . . . If a man was too poor to pay any *lobolo*, he might *ethula* his first daughter to his father-in-law to replace the mother, i.e. his first daughter would be sent to his wife's father to be given in marriage by him, so that he received from his grand-daughter's marriage the *lobola* for his daughter."<sup>4</sup> Note that this marriage is a perfectly valid marriage yet no *lobolo* has been paid. If the union were not a valid marriage and no *lobolo* had been paid none

<sup>1</sup> SUMNER, W. G. and KELLER, A. G. (1946) III, p. 1697-700. <sup>2</sup> TORDAY, E. (1929) p. 272.

<sup>3</sup> PEARSALL, M. (1947) p. 31.

<sup>4</sup> KRIGE, E. J. (1936) p. 120

of the children would have been his. All would have gone to the woman's father. Hence the Zulu social system recognizes that marriage is one culture trait and *lobolo* another and that they are not inherently connected.

Because this distinction between the two institutions is the main theme of this article I am supplying ample evidence in support: "Among the Bakundu of the Cameroons, if a man marries a woman without paying for her, the children of the marriage belong to the wife's brother."<sup>1</sup>

Mr. Whitfield describes what happens when, after a valid marriage, the woman dies without bearing a child: "If through premature death barrenness, or for some other cause not her husband's fault, she fails to fulfil her essential function of bearing children, the husband's family need not pay *bogadi* for her."<sup>2</sup>

Dr. Meek is also specific on the point that a native marriage can exist and persist without any *lobolo* payment. "The man buys by gifts, or services to her parents, complete rights over the woman and her subsequent progeny. This is shown by the restrictions which are placed on his rights if he fails to make his payments or if they are deficient. Thus among the Munshi a man may marry a virgin without making any payments, but he thereby forfeits his claim on their children."<sup>3</sup>

Also among the Kofa of Northern Nigeria, "a woman's first born female child may be claimed in marriage (without bride-price) by her father's younger brother's son, if her husband has failed to give the customary gift of twenty pieces of cloth to his wife's father when she had born her first child (whether male or female)."<sup>4</sup> Such a marriage by the father's younger brother's son is a valid marriage.

Another example, also from Northern Nigeria, makes this point clear: "In Northern Nigeria when the girl reaches the age of ten, the prospective bridegroom pays the father the dowry money, which is from seven shillings to a pound among peasants, and five pounds to fifty pounds among chiefs, district heads, etc. When the dowry

money has been paid a Mallam is obtained, who informs the people of the village that the two are engaged.

"Every Sulla (feast or fast) the prospective bridegroom gives presents of head-dresses, money for henna, waist cloths, or necklaces of five franc pieces to the betrothed. When the girl is fourteen, she is married to her betrothed unless a richer man goes to the father and gives him a bigger dowry. The marriage ceremony takes place in the girl's father's house. The women of the girl's mother's household wash and purify the girl for five days beforehand. She is smeared with henna, and clothes soaked in scent put on her.

"The relations of the prospective bridegroom collect Mallams who assemble at the girl's father's house, together with all the friends and relations. The head Mallam mentions the names of the bridegroom and the bride three times. He then turns to the bride's 'Wakili' (father or person who gives the bride away) and says 'Do you bear witness that so-an-so is given to so-ando-so in marriage?' When the Wakili answers 'Yes' the head Mallam prays and strokes his nose with both hands three times and the actual marriage has then been completed."<sup>5</sup>

Here it is quite evident that the payment of the *lobolo* has nothing whatever to do with the marriage ceremony. One is a continuation of a pagan practice and the other is a Mohammedan institution. If the *lobolo* legalized the marriage what does the marriage ceremony do?

"As is well known, the children of a *mugariri* do not belong to him, but to their maternal grandfather, and the actual father cannot lay any claim to them until he has paid *lobolo* and thus ceased to be a *mugariri*. It must be remembered, however, that there are two distinct types of *kugarira*. There is firstly the custom adopted by a man too poor to find *lobolo* at the time he wants a wife. He becomes a *mugariri*, and there is an understanding that when he can find it he will pay *lobolo* for the girl and then emancipate himself. Secondly, there is the custom of a father giving his daughter in marriage

<sup>1</sup> FRAZER, J. G. (1919) II, p. 356.

<sup>2</sup> WHITFIELD, G. M. B. (1948) p. 209.

<sup>3</sup> MEEK, C. K. (1925) I, p. 201. <sup>4</sup> MEEK, C. K. (1931) I, p. 115. <sup>5</sup> JONES, R. C. (1932) V, p. 9.

to a man who agrees to become a *mugariri* and to remain in that relation to the father of the girl even though he can subsequently pay *lobolo*.<sup>1</sup> In both cases the marriage was the same; in the one case, however, the payment of the *lobolo* transferred the children. Among the natives of the Transkei the Rev. R. Rose remarked: "in the normal state of customs, the cattle were given after, not before marriage; often after the birth of the first child."<sup>2</sup>

Schapera, an authority on Tswana law, writes: "But both here (i.e. among the Kgatla, Matete and other tribes) and among the Ngwato, so long as the consent of both families has been formally obtained and expressed through the betrothal ceremonies, the cohabitation of the man and the woman constitutes a recognized form of union establishing certain legal rights and duties on both sides . . . No man can claim, for any purpose, the children he has by any woman until he and his family have agreed to transfer, and under certain circumstances until they have actually transferred, *bogadi* (*lobolo*)."<sup>3</sup>

Now this statement, that after mutual agreement between two families, "the cohabitation of the man and woman constitutes a recognized form of union establishing certain legal rights and duties on both sides", should be contrasted with the case of a man merely consorting with a woman. "The man visits her openly and regularly at her own home . . . Nevertheless, so long as they are not formally betrothed and especially as long as *bogadi* has not been paid, neither party is under any legally enforceable obligation towards the other. The man is not bound to support the woman, nor she to remain with him; and no right of action lies if the one abandons the other."<sup>4</sup> Note that in both instances man and woman are cohabiting without *lobolo* being paid, yet in the first instance "legal rights and duties on both sides" are established, for example an action for adultery could be brought and maintained; while in the second, no legal rights and duties are established and no action could lie for adultery.

<sup>1</sup> POWYS-JONES (1928) p. 31. <sup>2</sup> 1883 Report. p. 154.

<sup>3</sup> SCHAPERA, I. (1939) p. 83.

It is thus clear that in the first instance, a state of marriage exists and adultery is possible and in the second no marriage exists and no action for adultery is possible. In both cases no *lobolo* has been paid, and in each any children born are not under the care of the begetter.

To show that there is a difference between marriage and *lobolo*, Mr. Whitfield writes: "Again, if for any good and sufficient reason a man divorces his wife, should there be no children he cannot be made to pay *bogadi* for her."<sup>5</sup> One cannot divorce a concubine, or a mistress, consequently to be able to divorce a wife implies that the man is properly married to the woman yet no *lobolo* has been paid and none is payable if there are no children. A clear instance of a valid native marriage without *lobolo* and that *lobolo* is concerned only with the children.

Mr. Whitfield makes it even clearer that among the Rhodesian Matabele marriage and *lobolo* were two quite separate institutions. He writes: "In Rhodesia Matabele customary unions are of two sorts: (1) those which go through formal ceremonial stages are only observed in the case of girls (he then describes the various stages of the ritual that makes up the marriage ceremony and then describes what happens when women get married). The woman goes to the man's kraal. . . . The man gives her a hoe and perhaps a goat is killed. This, consummated by cohabitation, completes the marriage . . . No mention has been made of *lobolo*, the payment of which is not necessarily incidental to the marriage ceremony, although in the case of the marriage of the King's daughter payment was made at the time of the marriage. . . . In very many instances payment was not made at all, when all rights over the children remained vested, so to speak, in the bride's father and his heirs. *Lobolo* in Matabeleland at any rate, is the consideration passed by a man to his father-in-law, either before or after marriage, by which the marital control by the husband is substituted for the parental power of the father; the payment of which further secures to the husband full rights of parental control over the

<sup>4</sup> Id. (1938) p. 126.

<sup>5</sup> WHITFIELD, G. M. B. (1948) p. 209.

children of the marriage — control which but for the payment, he would not possess ... Payment of *lobolo* is not enforceable by Native Law, but failure to *lobolo* involves the above disability ... So it is more correct to say that to pay *lobolo* is a right (of the husband) than to say it is an obligation ... It may be questioned whether the *raison d'être* of *lobolo* is not the determination of the guardianship of the children of the woman *lobolaed*.<sup>1</sup> Here there is a clear distinction made between marriage and *lobolo* nor is there any necessary connection between them. The husband, though validly married, is not obliged to pay any *lobolo*, but then he has no right to his wife's children. He can claim the right to pay *lobolo* and so secure for himself and his family the children he begets or, to put it concisely, *lobolo* is the child-price.

It is quite clear that here, though no *lobolo* has been paid, a valid marriage exists. Mr. Bullock writes to the same effect: "The conceptions of the Matabele regarding *lobolo* must also be considered. It was paid at once for a 'princess', but in many other cases it was not paid until a child was born of the marriage. It was what was used to redeem the children from their mother's family."<sup>2</sup>

This fact was noted by Decle more than half a century ago. Among the Matabele, the husband does "not buy the wife from her father, but after the first child is born the husband has to pay its value, or else the wife's father has the right to take the child away."<sup>3</sup> Here the union of the Matabele man and woman is a valid marriage but the destiny of the children depends upon whether the right to keep them is paid for by the begetter, or not.

As *lobolo* was what was used to redeem the children from their mother's family, there was, by native law among the Matabele, no means of enforcing the payment of *lobolo*. Thus: "It may be emphasized that, with the Matabele, 'payment' of *lobolo* was not enforceable by native law, but the failure to *lobolo* involved the loss of rights of parental control over the children of

the marriage. In such cases the *malume* (maternal uncle) of the children claimed them until *lobolo* was paid."<sup>4</sup>

This feature of Matabele custom, that there was no means of enforcing *lobolo* payment, is also reported among the Tswana. Schapera writes as follows: "There does not appear to be any right on the part of the wife's people to sue the husband's people for the payment of *bogadi* ... As already shown, it may be many years before the *bogadi* is paid; but in the meantime the wife's people must patiently wait. But as long as *bogadi* is not paid, the union between a man and a woman, although considered regular if based upon the approval and consent of both their families, is nevertheless not yet held to be a complete marriage. The children of the union are in consequence not legally the children of the man."<sup>5</sup>

Here Schapera distinguishes between a recognized regular union and the payment of *lobolo*, before the children of such a regular union fall to the guardianship of their begetter.

This fact that a valid native marriage can be effected without the payment of *lobolo* is recognized in the Natal Code of Native Law: "The essentials of a customary union as laid down in sub-section (1) of section fifty-nine of the Code are:

- (a) the consent of the father or guardian of the intended wife, which consent may not be withheld unreasonably;
- (b) the consent of the father or kraal head of the intended husband, should such be legally necessary;
- (c) a declaration in public at the celebration of the union, by the intended wife to the official witness (i.e. a person specially appointed to attend at the celebration of customary unions) that the union is with her own free will and consent."<sup>6</sup>

There is here no word about the need for *lobolo* to validate the marriage. Furthermore it has been expressly stated that *lobolo* is not essential

<sup>1</sup> WHITFIELD, G. M. B. (1948) p. 230, 231, 232.

<sup>2</sup> BULLOCK, C. (1950) p. 275.

<sup>3</sup> DECLE, L. (1898) p. 158.

<sup>4</sup> BULLOCK, C. (1950) p. 276.

<sup>5</sup> SCHAPERA, I. (1938) p. 143.

<sup>6</sup> ROGERS, H. (1949) p. 220.

to a marriage, thus in "Mbonambi v. Sibya (1944) N.A.C. (T. and N.) 49 it was held . . . that as the essentials of a customary union at that time were consent of the contracting parties and that of the woman's guardian, and cohabitation, it must be inferred from the circumstances of this case that there was a valid customary union between the appellant's father and his mother . . . that delivery of *lobolo* was not absolutely necessary and that such unions were often allowed on the understanding that *lobolo* is paid when obtained or on marriage of the eldest daughter of such a union."<sup>1</sup> Mr. Simons writes: "Under the Code (of Natal) . . . the essentials of a marriage are defined, and do not include *lobolo*."<sup>2</sup>

Professor Krige draws attention to a distinction made by the Lovedu between two types of mating: "The Khilovedu word *hu nywola* means to marry a wife with the emphasis on the bride-price transfer; it is distinguished *inter alia* from *huviga*, to marry, where the aspect stressed is that a man has married according to certain ceremonial forms."<sup>3</sup>

That a valid marriage without the payment of *lobolo* can be contracted among the Xhosa is well recognized. "It is usually in the case of poor people that the *ikhazi* (*lobolo* cattle) is not immediately handed over in full, and then they make use of the expression: *Ndi boleke*, 'lend her to me'. This does not mean that there is no marriage or that the bride is only lent to the young man. It only means that the *ikhazi* will be handed over as soon as possible, in the near future."<sup>4</sup> This point is illustrated by another example from among the Xhosa. "This binding promise (to hand over a maiden in marriage) which like all transactions is discussed and agreed upon by the two families in the combined *inkundla* at the *umai* of the girl's people, may also be accompanied by an agreement whereby the bridegroom 'pledges his eldest daughter as a kind of security for the *ikhazi* of her mother'. This in reality means that the future *ikhazi* of the daughter is the security."<sup>5</sup>

<sup>1</sup> WHITFIELD, G. M. B. (1948) p. 182. <sup>2</sup> SIMONS, H. J. (1949) p. 50. <sup>3</sup> KRIGE, J. D. (1939) p. 393.

<sup>4</sup> VAN TROMP, J. (1948) p. 47.

I have thus shown that in Negro society, valid fertile marriages occur without any *lobolo* being paid. The same point of view is grudgingly admitted by the Rev. D. W. T. Shropshire. "This consent (of the two parties) and these religious ceremonies are even more fundamentally essential than the legalities of *lobolo* which legalities on certain exceptional occasions may not be enacted",<sup>6</sup> and the omission of which, I may add, would not invalidate the marriage but would affect the destiny of the children.

Dr. Mayer makes it clear that among the Gusii *lobolo* and marriage are two quite distinct institutions. The institution of *lobolo*, or *nyaika* as it is called there, carries with it the same rights and obligations as it does in other Bantu societies. Thus, if the wife dies, a proportion of the *lobolo* cattle may be returned or a substitute wife, a *riika*, may be given to him. "The substitute wife is identical with the dead woman. Her children and the dead woman's count as full siblings . . ."<sup>7</sup> If the husband dies, the levirate marriage operates. If the woman deserts and lives with a paramour all children born belong to her cultural husband not to the begetter. If full *lobolo* is returned the children accompany their mother.

A marriage comes into being as a result of the *enyangi* ceremony. "The *enyangi* ceremonial is far too massive to be described in detail here, but a brief outline must be given to make intelligible the references which will have to be made later in the text.

"*Enyangi* proper occupies two successive nights which are very different in character. On the first . . . open house is kept . . . The second night . . . is one of solemn magico-religious ceremonial behind closed doors, attended by perhaps a dozen guests from each family and presided over by a special priest and priestess. Three days later — or two days if the husband was already married — a white he-goat is sacrificed at the home of the couple. Next morning the bride takes one of the traditional *enyangi* names by which she will be known for the rest

<sup>5</sup> VAN TROMP, J. (1948) p. 46.

<sup>6</sup> SCHROPSHIRE, D. W. T. (1946) p. 74.

<sup>7</sup> MAYER, P. (1950) p. 43.

of her life. Her iron ankle-rings are put on, signifying that "she has now obtained the full status of a married woman, and is bound to her husband both by legal and by magico-religious sanctions ... After *enyangi* divorce requires additional solemnity and must be signalized by a semi-ritual act — the cutting of the thongs of the woman's left ankle-ring by means of the man's spear."<sup>1</sup> Dr. Mayer now contrasts the results of the *nyaika* transaction with the *enangi* ceremony: "it is not the bridewealth mechanism — that provides the specific overt sanctions against desertion or adultery on the wife's part ... we may say that bridewealth primarily makes women mothers whereas *enyangi* makes them wives."<sup>2</sup>

Thus the Gusii recognize two distinct institutions, each with its own separate name and function. The one, the *nyaika* or *lobolo* transaction, determines the status of the woman's children; the other, the *enyangi*, or marriage ceremony, the status of the woman.

Dr. Peristiany finds among the Kipsigis of Uganda a similar distinction between *lobolo* (*tug' op koita*) and the marriage ceremonies. The *lobolo* is a fixed number of cattle and this is agreed upon before the marriage ceremonies start. The most important ceremony therein is the *ratet* or tying, once this has been performed and a child is born divorce is impossible. Divorce requires the return of the *lobolo* cattle plus offspring. The levirate operates but if a widow re-marries she cannot go through the *ratet* ceremony again. "Nowadays, if the second husband pays the bridewealth, his marriage will be valid, in spite of the fact that his wife is not able to go through *ratet*."<sup>3</sup> Here also it is quite clear that marriage and *lobolo* are two distinct institutions with two distinct functions.

Mr. Cook, writing of the Bomvana customs, draws attention to the main difference between the marriage of a chief and that of a commoner. In the marriage of a chief the discussions about *lobolo* take place **after** the marriage ceremonies are ended and the marriage completed; whereas

in the marriage of a commoner the discussions about *lobolo* take place **before** the marriage ceremonies begin: "In general it is found that the chiefs ... are far more punctilious in the observance of the old customs. It therefore seems to suggest that in the old days the matter of bride-price was not dealt with prior to the conclusion of the marriage ceremonies."<sup>4</sup> The above is an observation that supports my contention that marriage and *lobolo* among the Bantu are two separate and distinct institutions and are not necessarily connected. In other words that they occur together is a coincidental matter and not a functional one, i.e. that marriage and *lobolo* are not fundamentally related.

So far the instances of marriage without *lobolo* have been ones where, if *lobolo* is ever paid, it is paid long after the marriage. Here is an instance where *lobolo* is paid long before marriage. Harries writes of the Bapedi: "As soon as parents have arranged the marriage of the respective (infant) son and daughter, the father of the boy will pay over to the father of the girl the *lenyalo* (*lobolo*) cattle mutually agreed upon for the time being. Later, when the actual marriage takes place more cattle may pass, but this depends upon circumstances. In transactions of this nature the formal delivery of the *lenyalo* cattle is apparently not observed, though *hakgoenyana* or *madi-tsela*, as official witnesses, are indispensable. The idea in paying over these cattle whilst the girl, or perhaps both parties concerned are without discretion, is that she shall be nurtured on the milk of the cattle so paid. That is to say, her sustenance shall be at the expense of her prospective husband's father."<sup>5</sup>

Harries has mentioned that the cattle are not compensation and it is clear that when the cattle are handed over to the bride's family while she is still a babe, the bride's family have both cattle, their usufruct, and the girl until the marriage ceremony takes place.

Hence the handing over of the *lobolo* cattle informally in infant betrothal is an incident quite

<sup>1</sup> MAYER, P. (1950) p. 50. <sup>2</sup> Id. (1950) p. 57, 63.

<sup>3</sup> PERISTIANY, J. G. (1939) p. 63.

<sup>4</sup> COOK, P. A. W. (1931) p. 82.

<sup>5</sup> HARRIES, C. L. (1929) p. 6.

distinct from marriage and may have nothing to do with that marriage.

Harries has said that "the payment of *lobolo* is the very foundation upon which the institution of marriage according to native law rests."<sup>1</sup> Let us put his statement to the test. In infant betrothal, *lobolo* cattle are handed over by *A*'s father to *B*'s father. *A* and *B* are both infants at the breast. According to Harries the *lobolo* is paid for the marriage of these two which will occur later. What happens if *A* on reaching maturity repudiates *B*? The answer is that *A*'s father then marries *B*. But, "inter alia, a father may not cohabit with his sons' wives"<sup>2</sup>. Hence the *lobolo* payment did not create or establish a marriage between *A* and *B*.

Furthermore, if in such infant betrothals the girl, *B*, is older than the boy, *A*, and matures rapidly, *A* may consent to *B* being given in marriage to some one else and accepting a younger sister as his future wife.<sup>3</sup> Now in such an instance the *lobolo* cattle are not refunded, hence if *lobolo* is the basis of marriage, the marriage between *A* and *B* that it created, still subsists and *A* should be entitled to *B*'s children, as is the case in the *hlapetsha* custom when *B* consorts temporarily with *A*'s maternal uncle.

Yet if *A* now tries to have sexual intercourse with *B*, *A* commits adultery. Here is impeachable evidence that *lobolo* payment does not constitute marriage. Making this distinction between *lobolo* and marriage no anomalies appear. In these two instances among the Bapedi one may well ask, for whose marriage did the *lobolo* cattle paid in the infancy of the parties, function?

### LOBOLO WITHOUT MARRIAGE

Instances have been given of valid marriages without *lobolo*, of valid marriages with *lobolo* where the begetter keeps the children or where the payer of the *lobolo* keeps the begetter's children.

If now my contention is correct that *lobolo* is (a) the child price: (b) is not connected with marriage, then instances should be common where there are no marriages and yet because *lobolo* is paid, the payer irrespective of sex keeps the woman's children. Marriage has been defined as a recognized union of persons of opposite sex hence, when e.g. one Bavenda woman pays *lobolo* on another Bavenda woman, there can be no question of a marriage between them. Yet the *loboloed* woman is expected, by arranged liaisons, to produce children to the woman who paid the *lobolo*.<sup>4</sup> Now such an arrangement could only occur in a society where marriage and *lobolo* were independent and unrelated institutions.

"We find among the Phalaborwa also what may be termed the logical conclusion of the *lobolo* system, whereby it is possible for a woman who has daughters but no sons to "marry" a girl who will live with and help her mother-in-law in the same way as she would have, had the son been her husband. This girl will have children by a young man of the family of the non-existent husband or by private lovers, and the position will be much the same as if she had had a husband who had died, except that instead of being subject to the man who inherits the widow she is subject to the woman who *lobolaed* her. Among the Phalaborwa only a woman whose husband is dead can so 'marry' a woman, whereas among the Loredu any woman of means can do so."<sup>5</sup>

This logical extension of the *lobolo* principle is widespread. I often met it in my case work among the Opobo of Southern Nigeria. Dr. Meek reports: "A wealthy woman who may not be normally married to a man, contracts a marriage with a young girl to whom she subsequently allows a *cicisbeo* to have access, the resultant children belonging to the female 'husband'. This is common practice among the Yoruba, Nupe, Akoko and Gana Gana."<sup>6</sup>

The former Governor of Nigeria, Sir Frederick Lugard in *Political Memoranda* issued in 1918 objected strongly to this custom. These views

<sup>1</sup> *Id.* (1929) p. 3.

<sup>2</sup> HARRIES, C. L. (1929) p. 50.

<sup>3</sup> *Id.* (1929) p. 10.

<sup>4</sup> STAYT, H. A. (1931) p. 143.

<sup>5</sup> KRIGE, E. J. (1937) p. 363.

<sup>6</sup> MEEK, C. K. (1925) I, p. 210.

were expressed by him later on as follows. "The custom of elderly women procuring young girls, whom they call 'wives' and with whom they go through a marriage ceremony, appears to be prevalent among tribes with widely different origins and customs. The purchase money is misnamed 'dowry' and the woman-husband becomes absolute owner of the girls. The same thing is sometimes done for an identical purpose by very old and decrepit men. In some few cases it may be that the purchaser wishes to assure herself of a "wife" who will tend her in her old age, but the more usual reason is in order to claim fees for adultery, and to gain possession of the children of such intercourse, who by native custom are the property of the 'husband' who has paid the dowry. In such cases, no doubt, the woman, who is in fact the keeper of a brothel, would be prosecuted on a criminal charge, and awarded no compensation for the loss of her 'wives' and their dowries. Or it may be that the girls are 'married' by women traders, who pay a higher dowry than the young men can afford, in order to provide themselves with labour to transport their goods, since the men of the tribe refuse such work."<sup>1</sup>

Though Sir Frederick Lugard correctly states the function here of dowry (*lobolo*) by saying that the children are "by native custom the property of the 'husband' who paid the dowry", he has failed to see that women paying *lobolo* for other women is a logical extension of the *lobolo* custom and calls the process "keeping a brothel". Sir Frederick is wrong. The tribes where this logical extension of the *lobolo* system is extended to women have no word for "brothel". Brothels are most highly evolved under European culture, they form no part of Negro culture. Whether a man or a woman pays *lobolo* is not a question of keeping a brothel in one case and of not keeping a brothel in another, to label the practice of paying *lobolo* when a woman does so as "brothel-keeping" is to display a complete ignorance of native life and native society. When the non-expert expatiates upon native custom one can expect such travesties, but it is deplorable when Governors lend the weight of their authority

to misconceptions. Sir Bernard Bourdillon likewise, not understanding the function of *lobolo*, ordered that all children could be claimed by their natural fathers. Whether the natural father was also the cultural father was immaterial he declared. This instruction traversed the English Common Law where the custody of the bastard child is vested in the mother and not in that of the putative father.

Evans-Pritchard records the same custom among the Nuer. "Nyaluthni is a barren woman with many cattle which she has obtained partly as fees, for she is a well-known diviner and magician, and partly from the bride-wealth of her nieces ... Nyaluthni has also married, by payment of bride-wealth and by performance of the usual ceremonial, two Nuer girls ... she speaks of them as my wives. Nyaluthni is the pater of the children of her wives and she is always spoken of as such when their names are mentioned ... Her children address her as *gwa* 'father' and not as *ma* 'mother'."<sup>2</sup>

This change in the terminology appears strange to us because our connotation of the word "father" does not fit such a social pattern but if "father" were defined in terms of *lobolo* no anomaly appears in addressing the female payer by the Bantu word which we wrongly translate as father. 'Father' is a fairly simple term for a translator when it is given in the singular; the nearest Bantu equivalent means the man (person it should be) in whose name the bride-price was paid for 'mother', and can be defined in the great majority of instances as 'male parent'.<sup>3</sup> If now the word *gwa* is translated as "the person who paid *lobolo* for mother" there is nothing anomalous in its use to describe a woman as the payer of the *lobolo*, because there is nothing in the word of the transaction which fixes the sex of the payer and the use of, e.g., the word *gwa* in Nuer for any person who pays the *lobolo* logically follows.

Although it is quite evident what is the function of the bride-wealth (*lobolo*) in Nuer society Evans-Pritchard does not make this point clear whereas Dr. Meek, with whom I agree, does: "This custom (of women paying *lobolo* on other women)

<sup>1</sup> LUGARD, F. D. (1929) p. 387. <sup>2</sup> EVANS-PRITCHARD, E. E. (1945) p. 31. <sup>3</sup> WILLOUGHBY, W. C. (1923) p. 103.

which is found in numerous Nigerian tribes shows that a main object in the bride-price is to obtain the custody of the children."<sup>1</sup>

This logical extension of the *lobolo* system betrays Mr. Braatvedt's uncertainty of native custom and of the fact that the native thereby regards *lobolo* as one institution and marriage as another, with usually one woman fulfilling the functions of both simultaneously, but not necessarily so. Mr. Braatvedt, as president of the Native Appeal Court of the Transvaal and Natal in 1941, remarked in *Motini v. Selepti*, "I am not aware of any custom by which a woman can 'buy' another woman to become her servant by paying cattle for her to her father. If such a practice has sprung up anywhere, it is contrary to native custom and *contra bonos mores*. The Courts will not sanction it, for women cannot be treated as chattels or slaves to be sold and bought."<sup>2</sup>

Yet in volume 2 of *Venda Law*, published by the ethnological department of the Union Government, one finds under section 1005 the following declaration of a legal right exercisable by a Venda woman: "Some women own property of their own acquired by work and as gifts and use it to *Mala* (*lobolo*) women who thereby become their wives. These wives perform the same household duties as women who are married to men. The owner calls the woman by name with honorific (*vho-Mukene*) and *vhone* after she has born a child, sometimes *inwi* before this. The woman calls her owner, *munna wanga* 'my husband' and by name with honorific, (*vho-mukene*) also *ma-zwale*, (mother-in-law) if she has been given as wife to her owner's son."<sup>3</sup>

This same custom exists among the Basuto: "A widow who was left without children but in possession of cattle could marry a wife and get some male friend or relation to beget children for her. These children would be hers, and no one could contest her right to them."<sup>4</sup>

A more curious instance, and the only one known to me, occurs also among the Basuto where a woman is declared to be a man and is

then married to a woman to produce children for her, thus.

"When the first wife of a chief had only daughters a wife would be married for the eldest, who would be declared to be a man, the wife being handed over to the next male relative of her female husband for the purpose of raising a family. The eldest son of this union was supposed to succeed to his grandfather."<sup>5</sup>

This *obiter dicta* of Mr. Braadvedt is a good instance of a European, not knowing what is native custom, yet telling the world what it is. That the president of a Native Appeal Court was not aware of what is not only not a recent innovation but is a widespread custom and the logical extension of the *lobolo* system is deplorable, but that he should still labour under the impression that *lobolo* buys a woman is dangerous for the administration of justice.

The logical conclusion from viewing *lobolo* as child price is that anyone may buy the rights to children without becoming married. This state of affairs is found among, e.g. the Swazi and the Nuer. In Swaziland the right to a child, born not as a result of marriage, but as a result, of promiscuity, may be purchased by the begetter thus: "Connected with the payment of fines for seduction is the payment for the right to claim one's legitimate child. In the ordinary course an illegitimate child belongs to its mother's father, but it can be claimed by its natural father on payment of the prescribed amounts. These amounts also vary from one district to another, and are different now from what they were in earlier times. Originally the father had to pay one beast for a boy and two for a girl. These animals are called *tinkomo tokutsenga umtwana* (the cattle to buy the child). One man informed me that the price for a girl now was anything up to ten head of cattle, and that that for a boy remained at one. Another man informed me that there was no fixed amount payable now and that the amount depended on the demands made by the girl's father. Not infrequently the natural

<sup>1</sup> MEEK, C. K. (1937) p. 276.

<sup>2</sup> WHITFIELD, C. M. B. (1948) p. 222.

<sup>3</sup> VAN WARMELO, N. I., PHOPHI, W. M. D. (1948) II,

p. 389. <sup>4</sup> ELLENBERGER, D. F. and MACGREGOR, J. C. (1912) p. 278.

<sup>5</sup> ELLENBERGER and MACGREGOR. (1912) p. 277.

father of the child will not claim his illegitimate daughter until she is about to get married, then he will wish to get the *lobolo* cattle. It is not surprising that the grandfather of the illegitimate girl, in these cases, will demand a high price for her. In any case he cannot demand more than the *lobolo* value of the girl. . . . The natural father cannot be forced to purchase his illegitimate children, but he can demand them from the girl's people if he is prepared to pay what they ask."<sup>1</sup>

Among the Nuer: "there are many children born of unmarried mothers and children born of an unmarried mother may belong to different social groups, because their physiological fathers have a right to pay a fee of from four to six head of cattle to legitimize their natural children. The payment of a fee makes the child a member of the genitor's household. . . . A man is content to pay a fee to obtain possession of any children he may beget by an older woman."<sup>2</sup> By the payment of the *lobolo* the status of the child is transferred from his mother's group to that of his progenitor's group.

Here is another example which shows how *lobolo* functions as the child-price. Among the Maryika of Rhodesia, "a man is considered to have prior right, as compared with other suitors, to his wife's younger sister, who is known as his *bondwe*. She might be a mere child and so survive her affianced husband while still an unmarried girl. Nevertheless, if *lobolo* had been paid she would by the local custom become 'the property' of her elder sister's son by the deceased husband. Being his mother's sister, he could not take her to wife, but called her his 'little mother' and kept her at his kraal, allowing and encouraging her to cohabit with temporary husbands so that she might bear children which became his property. . . . The 'little mothers' went through no form of marriage."<sup>3</sup> Here again the Bantu differentiates clearly between *lobolo* and marriage.

Another function that *lobolo*, as distinct from marriage, plays in Bapedi society is to provide an heir to a *lapa*, i.e. to a hut that lacks one.

Thus, if a woman has no son but several daughters, the *lobolo* cattle received for a daughter, "are taken and with them a woman is married. This woman is brought to the *lapa*, where she cohabits with the man, who in the ordinary course would have cohabited with the wife of such a *lapa*. If the husband is still alive, naturally he is the man. If not, the eldest son of the next *lapa* has the privilege. Should she give birth to a son he is regarded as the heir to that *lapa*, takes precedence over the daughters thereof and is entitled to all the cattle derived through the marriages of these daughters, whether derived before or after his birth."<sup>4</sup> Now though there is a *lobolo* transaction there is no marriage as can be seen by the fact that in lieu of the husband of the woman who is head of the *lapa*, a son of the husband may beget the children.

In all these instances the *lobolo* payment, not the marriage for there need not be any marriage, fixes the status of the children. In other words *lobolo* and marriage are two distinct institutions and need not be interconnected.

A further instance that cattle, not men, beget the children is that among the Bapedi: "should a young girl be seduced, and, after being delivered of her child, married with cattle by a man other than her seducer, her child becomes the indisputable offspring of the man who paid the cattle, and is regarded as being quite legitimate."<sup>5</sup>

Now for this child there has been no marriage; it was born to the girl by her seducer; she now marries but the child's status became legitimate in the new husband's group not by marriage, but by *lobolo*.

A further instance among the Bapedi of *lobolo* being distinct from marriage occurs when a family is left without a male. "A woman inherits when there is no male in her family capable of doing so. She then exercises marital power over the women belonging to the estate. They become subject to her tutelage. She may take cattle and acquire a wife who cohabits with a man selected by her. This is often done, but it must be understood that this presumes that no obligation to raise

<sup>1</sup> MARWICK, B. A. (1940) p. 91.

<sup>2</sup> EVANS-PRITCHARD, E. E. (1948) p. 20, 22.

<sup>3</sup> BULLOCK, C. (1950) p. 272. <sup>4</sup> HARRIES, C. L. (1929) p. 40. <sup>5</sup> HARRIES C. L. (1929) p. 36.

seed to a family exists. For instance, where she inherits the property of an unmarried male relative."<sup>1</sup> As there are no males in this particular

family, there can be no marriage, yet by *lobolo* a male is born to the family; hence marriage and *lobolo* are not connected.

## PART II

### THE FUNCTION OF LOBOLO

It is now necessary to see what is the function of *lobolo* in Negro society. This function will be viewed first in general terms, then under the aspects of the Sororate, Levirate and Divorce.

"A man begets no children" is an important declaration. A man by merely making a woman pregnant does not thereby become entitled to the child either in our own or in Negro society. The child becomes his when he pays to transfer its status as a member of its mother's group to that of his own.

Harries gives a good example of the fulfilment of the above aphorism in the *hlapetsha* custom, where, in the case of infant betrothal, if the male is too young to cohabit with his wife he nevertheless goes through the marriage ceremony with her and *lobolo* is paid. Thereafter until he, her husband, is mature enough to take her, she consorts with his maternal uncle. When the lad is mature, she with any children she may have had with the uncle now resides with her husband. Any children she thus brings with her are regarded as those of her husband because he has paid the *lobolo*.

Harries, discussing the laws of the Bapedi makes it clear that *lobolo* is concerned only with the destiny of the children: "It (*lobolo*) proclaims the legitimacy of all offspring, hence the aphorism, 'a man begets no children, for they are begotten by the cattle paid for the mother'. In other words, it matters not who is the actual father, the children are claimed by the man who paid the *lobolo*."<sup>2</sup> If Harries had replaced the word "man" by "person" at the end of his sentence he would have enunciated the general

rule for the function of *lobolo*; namely that it; and not marriage, decides that the children invariably go to the person, whether male or female is immaterial, who pays the *lobolo*.

From Harries' enunciation of the function of *lobolo* it follows that the title of this article is inevitable, i.e. "Child-price," or the price paid to the woman's family to void its claim to the woman's children. This concept of *lobolo*, as being concerned entirely with deciding the status of a child and in no way concerned in validating a marriage, may be seen in the customs of the Nuba. "Illegitimate children (i.e. adulterous) 'belong to the bride-price', i.e. to the legal father; but he sometimes refuses to have them, in which case the child goes to the mother's father or brother. It may then be bought-back, as it were, by the natural father for the same amount which is allowed for the children in the bride-price refund, five cows for a boy and four for a girl. The following regulation is even more characteristic. If a girl is seduced and put in the family way before she became betrothed (i.e. before her fecundity had been 'bought'), the child belongs to her people; but the natural father or his family is expected to buy it back for the usual amount.

... The child of an unmarried girl would never be adopted by the man whom she might afterwards marry: he would object that he intends to marry 'the girl alone'.<sup>3</sup> Here one sees *lobolo* with and without marriage settling the status of the child. *Lobolo* functions here without validating or invalidating any marriage.

Among the Nuer, "should a wife leave her husband after having born two children the cattle will remain with her kinsmen and any children she may bear by other men will be claimed by

<sup>1</sup> HARRIES, C. L. (1929) p. 45. <sup>2</sup> HARRIES, C.

L. (1929) p. 5. <sup>3</sup> NADEL, S. F. (1947) p. 432.

her husband's people. She is still married to him though she lives as a concubine to another man."<sup>11</sup> This case again illustrates the rule that he who pays the *lobolo* keeps the children.

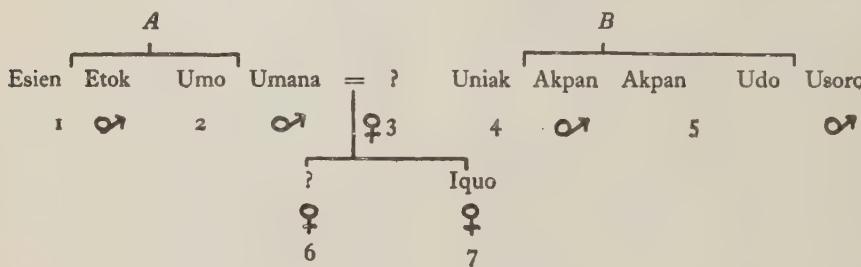
With the realization that *lobolo* and marriage are independent institutions and that *lobolo* buys the right to keep a woman's children irrespective of the begetter, the following types of marriage cease to be anomalous, thus among the Lango: "Should a man be so poor that he could not obtain a wife and none of his clan would help him, he would go to his *nero* (mother's brother). He would build his house there and would work for his *nero* as one of the family. In due course the *nero* would provide him with a wife (often the widow of a clansman) and would also give him some cattle. His wife kept his *nero*'s ritual observances and the *nero* was said to have married her, though he had no sexual rights over her. The *okeo* (nephew) could never leave his *nero*. Should he have done so he had to leave his children and wife behind, for they belonged to the *nero*'s clan."<sup>2</sup>

There was no doubt in the native mind but that this union was a marriage. The children fell to him who had paid the *lobolo*, i.e. to the *nero*.

The position here of the nephew, vis-a-vis his mother's brother is exactly the same as that of an adopted son among the Nuba as reported by Dr. Nadel. "If the adopted son divorced his wife against the wish of his family-by-adoption, the bride-price would be refunded, not to him, but to his 'brothers' or 'father', who would also claim the children of this marriage which their wealth has made possible."<sup>13</sup>

Here again there is no question but that the marriage of the adopted son was legal and valid, but as the *lobolo* had been paid by his family-by-adoption and not by himself, it received the refund of the *lobolo*. Again there is a clear distinction between marriage and the function of *lobolo* as the child price.

A very similar instance came before me when in 1935 I was in charge of the judicial work of the Calabar Province, Southern Nigeria. A native, Akpan Udo Usoro of Nkwa Ibiono addressed a petition to me asking that a decision by default against him in the Native Court of Iyere be set aside. The essence of his petition can best be seen from the following genealogical table.



*A* and *B* are two families with two brothers in each. Nos. 2 and 4 are dead and the dispute is between the two men, Nos. 1 and 5 over the woman, No. 7. As the genealogy stands it is difficult to see on what grounds No. 5 is claiming, against No. 1, the right to the female No. 7. The claim depends on who paid the *lobolo*. Petitioner's story is that, when No. 2 was a lad, he came as an orphan to No. 4 and asked No. 4 to accept him as a

servant or household slave. No. 4 did so and in due course provided No. 2 with a wife on whom No. 4 paid the *lobolo*. No. 2 paid nothing. Consequently, asserts No. 5 the right to all children born of this union belonged to No. 4 and in proof thereof No. 5 asserts that No. 4 gave in marriage No. 6, the first daughter of No. 2 and retained the *lobolo*. Thereafter No. 2 and No. 4 died. Whereupon No. 1 as brother of No. 2 has

<sup>1</sup> EVANS-PRITCHARD, E. E. (1947) p. 183. <sup>2</sup> HAYLEY, T. T. (1947) p. 55. <sup>3</sup> NADEL, S. F. (1947) p. 226.

wrongfully taken the *lobolo* on No. 7. This *lobolo* is due to No. 5 because he has inherited his dead brother's (No. 4) properties and consequently the right to the *lobolo* on No. 7. By local native custom No. 5's claim is correct. He who pays the *lobolo* has the right to the children. There was no question that No. 2, Umo Umana was not married to the undesignated woman, No. 3, on whom No. 4, Unik Akapan, had paid the *lobolo*.

Note that in these examples there is a valid marriage and that *lobolo* has been paid. In normal Negro marriages the bridegroom pays the *lobolo* and therefore keeps his begotten children. In these three cases the bridegroom did not pay the *lobolo*, so he does not keep the children but the rule holds that the person who pays the *lobolo* keeps the children.

Among the Boloki of the Congo, "as wives are bought, the children, as in all such cases, belong to the husband. If he has lent his wife to another, the child is the property of the husband, unless a definite agreement had previously been made with the lover, that is to say, a higher price had been paid. In this case the child belongs to the wife and consequently also to her family."<sup>1</sup> As the husband has accepted a high price for the child he has no claim on it. Seemingly the child should then go to the lover who has paid the high price but the child goes to the woman's family because it was the husband not the lover who bought the right from the bride's family to keep the bride's children. Consequently if the husband foregoes that right - by accepting a high price for the children, the child automatically goes back to the mother's family thus fulfilling the basic pattern.

The lending of wives to a friend is a recognized practice among the Ibo but the children belong to the cultural husband because he paid the *lobolo*: "The Ibo word for this relationship or one of its partners is *iko* and defines a socially sanctioned form of mating in which the male is not the legal father of the children of his mistress although he usually is their biological father. They are legally the children of the man

who paid the bride-price for their mother. An *iko* relationship usually has most of the economic bonds implicit in the marriage relationship. Often the woman lives in her lover's compound."<sup>2</sup>

The clearest example that *lobolo* is the "child-price" can be seen from the custom that has developed among the Ijaw, a matrilocal, matrilineal tribe of fisher folk in the Niger delta. This tribe is surrounded by patriarchal, matrilocal tribes who contract alliances with Ijaw women. There are three types of alliances:

- "(a) The *Ikere* which is the normal Ijaw alliance where the male makes gifts from £1 to £10 to the woman's family for the privilege of cohabiting with her. All children thus born belong to the woman's group:
- "(b) The *Opu Ikere* where extensive gifts up to about £30 are handed over to the woman's group. As a consequence, the children born of this alliance are shared. The females remain with the mother's group and the males join their father's group:
- "(c) The *Fere* where the gifts are very large, exceeding £60, are handed over to the woman's group, all the children born by her went to the father's group."<sup>3</sup>

Here it is quite clear that the *lobolo* is the child-price and does not constitute the marriage. It is interesting to see the effect of a patrilineal society on a matrilineal. The matrilineal structure becomes replaced by a patrilineal. In northern Nigeria this adjustment between matrilineal and patrilineal societies has proceeded a step further. The middle or intermediate marriage stage is not found. "Owing to a dual system of marriage, (a) by a small bride-price which entitled the wife's family to the custody of children, and (b) by a large bride-price which entitles the father to the custody of the children, the kin are scattered about in various hamlets and villages and even local groups."<sup>4</sup>

<sup>1</sup> THURNWALD, R. (1929) p. 235.

<sup>2</sup> HARRIS, J. S. (1944) p. 325.

<sup>3</sup> FELLOWS, L. E. H. (1932) See also MEEK, C. K. (1931) p. 416. <sup>4</sup> MEEK, C. K. (1931) p. 416, 537.

I am also able to report the same thing happening in the Bamenda division of the Cameroon's Province. In an annual report to Government I mentioned that the villagers of Bebba Kitte are matrilineal but are in contact with patrilineal people. I learnt when visiting them at the end of 1941 "that this was only the fourth time they had ever seen an administrative officer. I found that they had two forms of marriage. One among themselves, where the *lobolo* consists of 3 Wukari cloths and gifts. A man marrying a woman under these conditions parts with all children at death. They revert to their maternal grandfather's family, i.e. to their mother's family, while the deceased's sister's son inherits the property.

"If on the other hand a Bebba Kitte man marries an Mbissa woman, i.e. a woman from a patrilineal tribe, and pays the full Mbissa *lobolo* then all the children belong to, and remain with, their father and his sons inherit as against his sister's sons."<sup>1</sup> In other words the man had bought the right to keep his children.<sup>2</sup>

The Rev. Willoughby considers that the matrilineal type of marriage is earlier than the patrilineal: "However, it may be in other communities, it is safe to assert that in these tribes (the Bantu of Central Africa) matrilineal marriage, is older than marriage of dominion (patrilineal); for we find tribes in process of passing from the former to the latter, but never the reverse, and fragments of matrilineal custom are embedded in the practices of tribes who are unaware that they ever followed the matrilineal rule."<sup>3</sup> My own experience in Nigeria brought me to similar conclusions, namely that the earlier forest tribes were all matrilineal, and probably matrilocal at one time but that as a result of tribes with a patriarchal system pressing on them from the

north they had changed. The change can be seen in operation among the Ijaw.

Dr. Meek has expressed similar views: "There can be little doubt that customs connected with the bride-price have exercised a profound influence on the development of social institutions, and have actually in many cases brought about the change from matrilineal to patrilineal institutions . . ."<sup>4</sup> In his analysis of the Jukun social structure Dr. Meek came to the same conclusion: "It (the social system of Jukun) is undergoing a process of change from mother-right to father-right conditions . . . I am aware of the view that the co-existence of features of a mother-right and father-right complex is not necessarily an indication that the people exhibiting them are in a state of transition, but there is no doubt that the Jukun are in this state. It is everywhere asserted that in former times all the Jukun 'followed their mother', and that the existing patriarchal features are due to contact with, and subjection to, the Fulani during the nineteenth century. The greater the subjection, the more patriarchal has the group become."<sup>5</sup>

## THE SORORATE

As *lobolo* buys the right to keep a woman's children what happens if the woman after marriage dies childless or is barren? Generally she is replaced by a younger sister, or a classificatory sister, and this arrangement is known as a sororate marriage. Sterility does not necessarily invalidate the marriage. The Negro accepts the marriage as valid and fulfils the *lobolo* by providing, without

<sup>1</sup> JEFFREYS, M. D. W. (1942).

<sup>2</sup> The effect of *lobolo* elsewhere in matrilineal societies is the same, it buys the right for the bridegroom to keep the bride's children. "The institution of a family independent of the bride's parents is not infrequently made to depend upon the payment of the bride-price and in these cases the line of descent of the children is changed when the conditions of the marriage bargain have been fulfilled. . . . (On the islands of Ambo and Uliase) proposals of marriage having been made by the man's relations, if he is accepted, he establishes himself in the bride's dwelling and becomes practically

the slave of his wife's parents, acting the part of the secret lover. All children belong to the mother's family. In Wetar, in the same group, although the married pair live at the wife's home until they get a separate dwelling, payments of a bride-price secure his children to the husband." (FALLAIZE, E. H. Family (Primitive), *Encyclopaedia of Religion and Ethics*. (Hastings, London: 1912) V, p. 719.

<sup>3</sup> WILLOUGHBY, W. C. (1923) p. 102.

<sup>4</sup> MEEK, C. K. (1925) I. p. 222.

<sup>5</sup> MEEK, C. K. (1931) p. 61.

any further *lobolo*, a woman to bear children to the validly married, barren wife: "No marriage is complete without children. Should the wife be barren or die childless, a sister or other younger relative would have to take her place. Any children born will be considered children of the barren sister, and the seed-raiser has no hut or status of her own. No *lobolo* is due for her, though a gift of from one to three head of cattle is usually given to thank the parents. If the deceased has borne children, her husband would have to pay *lobolo* in the usual way on marrying her sister."<sup>1</sup>

"Among the Matabele if the bride did not bear a child her sister would be supplied to make good the deficiency. If no sister were available, the cattle would be returned. No *lobolo* was payable for the second sister in such a case but only *okwokubonga* (a thank-offering)."<sup>2</sup>

Among the Basuto the same custom is found: "If a wife died still young and without issue, her sister, if she has one, took her place without further payment on the part of the husband, who, however, was supposed to make a small present to his father-in-law, and also to kill an ox, with the gall of which he and his new bride were sprinkled. A woman married in this way was called *Seantlo*, and her children had all the rights which those of her sister would have had."<sup>3</sup>

This custom is widespread in Africa. Among the Lango, "should a man's wife die before presenting him with a child . . . he is entitled to the return of his dowry, or if she has an unmarried sister. . . . she may be given to him without any further payment."<sup>4</sup>

"We are told that when a wife died (among the Lotuko) the bride-price could not be recovered, though sometimes a sister could be obtained in her stead without further payment."<sup>5</sup>

Among the Boloki of the Congo, "if a wife does not bear her husband a child, she introduces her sister to him".<sup>6</sup>

Among the Sudanic Yoruba the same custom is found. "Should a betrothed girl die, her family,

if they choose, may give as a substitute another young unbetrothed girl to the bereaved fiance."<sup>7</sup>

Note that in the case of the barren woman the marriage is not necessarily dissolved. She may remain the wife of her husband but then her family makes good the *lobolo*, not by supplying another wife who would then be the mother of her own children but by a female whose children are regarded as those of the barren wife. The seed-bearer goes through no marriage ceremony; she has no social status. There is here then a clear distinction in the Negro mind between marriage and *lobolo*.

Schapera developed this point more fully in his *Handbook of Tswana Law*: "Theoretically, *bogadi* can be taken or claimed back only: (a) if the wife dies childless, and (b) in case of divorce, if she is barren . . . It may be taken as a general rule that *bogadi* is not recoverable where the marriage has resulted in offspring."<sup>8</sup> In each instance the marriage is valid. What function therefore does *lobolo* (*bogadi*) play in validating the marriage if in the case of a wife dying childless the *lobolo* is recoverable and where she dies, having produced children it is not recoverable? I ask, what function in the marriage ceremony, *qua* marriage, does *lobolo* play? On the statements given by Schapera and, with which my own experience agrees, I cannot see that *lobolo* plays any function in the marriage; it does ensure children, but it does not ensure marriage, to the man who pays it.

Schapera continues: "The position is different when the woman is barren, or dies childless, for here she has, as it were, failed to carry out her contract."<sup>9</sup> In Bantu society the marriage is not regarded as being invalidated but the *lobolo* has not been fulfilled. Payment has been made for children and there are no children. How does the Bantu meet this situation of a valid marriage and a failure of *lobolo*? Schapera states: "In such cases matters are usually remedied through the practice of *seantlo*, by which one of her sisters or some

<sup>1</sup> SCHAPERA, I. (1937) p. 116.

<sup>2</sup> BULLOCK, C. (1950) p. 284.

<sup>3</sup> ELLENBERGER, D. F., MACGREGOR J.C. (1912) p. 278.

<sup>4</sup> DRIBERG, J. H. (1923) p. 165.

<sup>5</sup> SELIGMAN, C. G. and B. Z. (1925) VIII, p. 25.

<sup>6</sup> THURNWALD, R. (1929) p. 235.

<sup>7</sup> AJISAFE, A. K. (1924) p. 61.

<sup>8</sup> SCHAPERA, I. (1938) p. 145.

<sup>9</sup> SCHAPERA, I. (1938) p. 145.

other female relative is given to the husband as a 'substitute wife' to bear children in the house of the barren wife and he need pay no *bogadi* for this woman, nor were there any ceremonies when she came to live with him."<sup>1</sup> The barren wife remained with her husband. The marriage was valid and remained unbroken. The husband, for one *lobolo* payment now has sexual access to two women. One is his wife, the other is the seed-bearer to his wife. What part has *lobolo* played in the marriage? None, the marriage is still valid. What part does the seed-bearer play in the marriage? None, she has not the status of a wife: "A woman married by the 'cleansing of thighs' (i.e. as a seed-bearer) has no independent status as a wife, but takes after the senior wife in whose court-yard she lives."<sup>2</sup> What role therefore does she fill? She fulfills the *lobolo* by producing children. Here then is marriage existing as one institution and *lobolo* as another.

Here, among the Southern Bantu, are two women fulfilling for one man these two functions. One, the barren woman, fulfilling the function of wife, the other, the fertile one, the function of *lobolo*. Normally one and the same woman fulfills both functions simultaneously, but when she fails in the *lobolo* role the failure is met by the wife's family providing, with no additional *lobolo* paid for her, an extra woman to bear the children expected for the original *lobolo*. The Pedi proverb is so clear on this point: "It is the *lobolo* that begets the children."<sup>3</sup> It does not create a valid marriage.

#### LEVIRATE

"The levirate, or custom whereby a widow marries the brother of her deceased husband is a very widespread phenomenon and which has received much attention from social theorists."<sup>4</sup>

A number of theories on the origin of the levirate are discussed in Appendix D to Lippert's book *The Evolution of Culture*. Tylor's theory is

the most satisfactory one and quoted by Lippert it runs as follows. "The levirate . . . seems sufficiently accounted for as a custom of substitution, belonging to the period when marriage is a compact not so much between two individuals, as between two families, often made when the couple are infants unable to understand it, in fact sometimes before their birth. That the levirate forms part of this family transaction is consistent with other customs more or less associated with it, viz. that when a wife dies or turns out ill her family are bound to replace her by another, a rule which sometimes even holds for betrothal, and that the widow is not allowed to marry out of her husband's family unless by leave of his kinsmen, who have the choice of keeping her, or parting with her, usually for a price."<sup>5</sup>

The real explanation of the origin of the levirate has nothing to do with the principle of substitution; it lies in the function of *lobolo*, functioning as the child-price.

As the *lobolo* cattle have come from the bridegroom's family, then, should the bridegroom die while his wife is still nubile, the family are entitled to keep any posthumous children she may bear and steps are taken to see that she does bear children: "In paying *bogadi* for a woman a family buys her reproductive power." Consequently if, after having bought her reproductive power, her husband dies, his family "has the right to substitute for the original husband any male relation of the same age-grade, or of collateral lines immediately above it (paternal uncle) to enter the hut of the woman and to raise up seed to the man."<sup>6</sup>

Evans-Pritchard working among the Nuer points out the difference between a casual alliance and the levirate.

"A *cek ma lak* is translated in this paper as 'widow-concubine' for she is living simply as a concubine to her lover and he has no legal rights over her. He cannot compel her to live with him and cannot claim compensation if she commits adultery. He has no legal control over the children

<sup>1</sup> SCHAPERA, I. (1938) p. 155.

<sup>2</sup> PITJE, M. (1950) p. 55.

<sup>3</sup> PITJE, M. (1950) p. 55.

<sup>4</sup> LIPPERT, (1931) p. 670.

<sup>5</sup> LIPPERT, (1931) p. 670.

<sup>6</sup> EVANS-PRITCHARD, E. E. (1945) p. 18.

who can be taken away from him by her husband's kinsmen whenever they choose to remove them. His position is thus very different from that of a man living with his dead brother's wife (levirate marriage). If she leaves him he can divorce her and if she commits adultery he can obtain redress. Moreover, he has legal control of the children during their minority and no one can take them from him, as he stands in the place of pater."<sup>1</sup>

In the first case the begetter had paid no *lobolo* nor did he belong to the family that had paid *lobolo*. In the second case, the alliance was that of the levirate, i.e. the man belonged to the family who had paid the *lobolo* cattle.

The same custom is recorded among the Lotuko: "The widow is usually taken by the brother of the deceased, but she might also be taken by the dead man's son or his sister's son . . . As the widow was taken without payment of bride-price her children by the second husband still counted as children of the deceased."<sup>2</sup>

Schapera also points out that children born of the levirate are regarded as the children of the deceased, not of the begetter, because it was the dead man who paid the *lobolo*. The Tswana sum up the situation succinctly by saying of such, "They are the children of cattle" by virtue of the *bohadi* paid on behalf of their reputed father for their mother." Be it noted, "children of the cattle"; not "children of the marriage".<sup>3</sup> A clear indication of the function of *lobolo*.

A Pedi, writing of Pedi tribal customs, shows that *lobolo* and marriage are two distinct institutions. Among the Pedi *lobolo* secures the lineage of a dead man, even if unmarried. "If he (the initiate) dies unmarried, his kinsmen have a duty towards him, namely, that of marrying him a wife and raising seed for him."<sup>4</sup>

The same custom is found among the Basuto where, "if a young man of rank died before he came to be married, a girl was often married for him, and a brother was appointed to raise up seed for the deceased. This was what the Basuto call *ho nyalloa lebitla* (to be married for the

grave)."<sup>5</sup> What is more, this custom is recognized by the Natal Code of Native Law where among the definitions one finds: "Ukuvusa, means a form of vicarious union which occurs when the heir at law or other responsible person uses property belonging to a deceased person, or his own property, to take a wife for the purpose of increasing or resuscitating the estate of such deceased person or to perpetuate his name and provide him with an heir."<sup>6</sup>

Dicke reported this custom among the tribes of the north eastern Transvaal: "I met many women who, in reply to enquiries made regarding their husbands would assert that these were dead . . . These women whose husbands were dead, were not widows in our sense of the word: they were 'married' to men, often to children, who had died before the marriage ever took place. Such 'widows' may never have known their husbands . . ."<sup>7</sup>

Children do not marry, hence one cannot be married to children, so that in none of these instances is there any marriage, or marriage ceremony in the case of the dead. On his behalf *lobolo* is paid and the children born by the *lobolaed* woman are regarded as his merely because *lobolo* has been paid on his behalf, and not on the grounds that he was married to the woman. Here is evidence then that marriage and *lobolo* are quite distinct.

Among the Pedi there is no marriage ceremony in the case of the dead man, merely *lobolo* is paid. Among the Nuer, under the same conditions, a marriage ceremony is performed but on behalf of the deceased and the term "ghost marriage" is used. The children born thereby are referred to as "ghost children". "If a man dies before he has married a wife, or if, having married a wife, she does not bear male children (even after his death) one of his kinsmen must marry a wife to his name . . . The obligation to marry a wife to the name of a dead kinsman is invariably carried out when the dead man has any close kinsmen to interest themselves in saving his

<sup>1</sup> EVANS-PRITCHARD, E. E. (1945) p. 18.

<sup>2</sup> SELIGMAN, C. G. and B. Z. (1925) p. 25.

<sup>3</sup> SCHAPERA, I. (1938) p. 165.

<sup>4</sup> PRITJE, M. (1950).

<sup>5</sup> ELLENBERGER, D. F. and MACGREGOR, J. C. (1912) p. 277.

<sup>6</sup> JANSEN, E. G. (1945) p. 3.

<sup>7</sup> Dicke, B. H. (1930) p. 549.

name from oblivion. No initiated male should be allowed to lie in his grave unremembered in his children ... This is a vicarious marriage. The vicarious husband acts as though he were the true husband in the ritual that precedes and brings about marriage, and in domestic duties when he and his 'wife' begin to share a home. In his physiological and domestic roles he is husband in all but the strict legal sense. In every day usage, people speak of him as the husband of the wife, so that it is only by enquiring that one learns the man to whose name she was ceremonially espoused. Nevertheless, it must be clearly understood that the legal partners to the union are not the man and woman living together. The legal husband is the ghost in whose name the bride-cattle were paid and the ritual performed. ... Only a kinsman takes a wife to the name of a dead man (and it is done through the cattle of the kin) ... This man may take what cattle remain after the bride-wealth has been paid and do what he pleases with them."<sup>1</sup> This ghost-marriage is really a disguised levirate marriage. In a levirate marriage the dead man has been through a marriage ceremony with the woman who is his wife and has paid *lobolo*. When he dies a kinsman takes the widow and raises seed to the dead man. Whereas in the "ghost-marriage" the man has died before he was married or had paid *lobolo*, so these things are done on his behalf after his death, and then a seed-raiser takes on the necessary biological role as in a normal levirate marriage, but whether one refers to a levirate marriage or to a ghost-marriage the function of the *lobolo* is the same: it buys on behalf of the dead man, the payer, the right to keep and raise the children as his.

## DIVORCE

If *lobolo* validated a marriage then it follows that the full *lobolo* should be returned when a marriage is invalidated or dissolved irrespective of the fact whether or no children have been

born as a result of the marriage. But full *lobolo* is never returned when children have been born and this procedure is only understandable on the assumption that *lobolo* is the price of the transfer of the status of the children from the mother's group to the *lobolo* payer's group. The Negroes' own attitude to divorce and *lobolo* can be judged from what follows.

Kuluba, the Treasurer of the Buganda Native Government told Dr. Mair that, "purely Kiganda marriages have no system of divorce, nor are they governed by law."<sup>2</sup>

Torday had already noticed this feature.

"Thus it seems that though a man may separate from his wife, or a woman may desert her husband, and a marriage is null if one of the parties is sterile, real divorce is not countenanced by Bantu law."<sup>3</sup> Such then is the outlook among the Bantu speaking Negroes: What now is the attitude of the Sudanic speaking Negroes? Here is one of them speaking. Ajisafe, a Yoruba, says. "Divorce is not permissible in native law. Husband and wife may be forced to separate. The woman may go and live with another man. In that case the man is bound to pay back the dowry to the husband. But the family of the woman will not regard him as the lawful husband of the woman."<sup>4</sup> Ajisafe omits to say that unless the *lobolo* is refunded all the woman's children born to the male of this new alliance will belong to the original payer of the *lobolo*. Because there is no ceremony of divorce, the family of the woman regard the marriage as still continuing, though the children as a result of a *lobolo* payment go to the adulterer.

When thus it comes to the wrecking of marriage the two culture traits of marriage and of *lobolo* become sharply differentiated and easily discernible in a court of law. There is no Negro ceremony that annuls the marriage, yet the British courts seek a formal annulment of the marriage prior to dealing with the question of *lobolo*. Hence the realization that *lobolo*, and marriage are two separate and not necessarily connected entities has been recognized in the Union of South Africa where in *Nyul v. Tofem*

<sup>1</sup> EVANS-PRITCHARD, E. E. (1945) p. 6, 11.

<sup>2</sup> MAIR, L. (1940) p. 17.

<sup>3</sup> TORDAY, E. (1929) Vol. II, p. 285.

<sup>4</sup> AJISAFE, A. K. (1924) p. 58.

it was stated, "that it was not necessary that respondent should have taken action for divorce before proceeding to the recovery of the cattle, provided the court were satisfied that desertion was malicious. *Semble*: The contract of a *lobolo* as an incident to legal marriage is not an illegal contract, it is enforceable at law."<sup>1</sup>

The Natal Code, when it comes to a divorce, recognizes that two actions are necessary to restore the *status quo ante*: "The *lobolo* is recognized in section 11 of the Act. The payment is not however, essential to the contract of marriage. In cases of divorce an action cannot be brought in the same action for *lobolo*. There must be a separate action which would lie in the Court of the Native Commissioner. . . . The Native Divorce Court will not entertain any action in regard to the refund of the *lobolo* as this is a claim cognizable in the Court of a Native Commissioner. The proper procedure is for the husband, after getting his divorce, to bring his claim in the Court of the Native Commissioner."<sup>2</sup>

I may add that it was also my practice in Nigeria to insist on an action for divorce first before proceeding to a claim for a refund of the *lobolo*.

So few Africans have themselves written on their own customs that one has to rely on European observers for most of the information on divorce. I shall open with an account by an Ibo on his own custom in this matter: "When a woman through some dispute between herself and her husband, left him and returned to her parents, it was illegal for the husband to claim his dowry during the time she had not been given to another man. But, on the other hand, if she had any issue or issues by another man, those children belonged to that former husband according to right, as well as those whom she had by him, if any. In the same way it was continued even if she actually lived or was living in the house of any other man who had not returned the dowry of the former husband. The father, or nearest relative when in place of the father, was responsible to refund the whole of the dowry, consisting of money and kinds

received for their daughter who had left her husband (with the exception of drinks and manual labours), before her marriage to another man is to be confirmed. The sufficient amount in use of the return dowry was often known to be deposited to respondent by the newly intended husband of the woman. If the woman had had some issue or issues by the former husband, a small portion from the full dowry could be waived aside."<sup>3</sup>

As *lobolo* is the transfer price of the children's status, or briefly the child-price, it follows that where children have been born after payment has been made for them, when a question of a refund of *lobolo* arises, the bride's family deducts, or retains, cattle as a set off to the children born; whether these are alive or dead is usually immaterial. Among the Tembu, "when a woman refuses to live with her husband, the latter has the right of recovering the dowry; he can claim the original number of cattle paid, but not the increase. One beast is allowed for every child the woman has borne the man living at the time of separation."<sup>4</sup>

"Among the Waja, a woman who is seeking dissolution of marriage goes off and lives with some other man. Her husband calls upon her parents for the restoration of his bride-price. The parents recover this from her paramour, and so the marriage is dissolved. The amount of bride-price recoverable varies with the number of children born. Any children born to the paramour before the repayment of the bride-price belong to the husband, but the paramour can redeem such children by certain payments."<sup>5</sup>

"Among all less civilized peoples, I believe, the children are left in the charge of the mother after divorce, and this is the case also among the Akamba. The father can keep them if he wishes to, but then he forfeits the purchase money. This is quite just according to the native view, for a man takes a wife chiefly to get children, and if he keeps the children when he is divorced, he has got value for the purchase money, and has

<sup>1</sup> (1912) S. R. 207, *Law Reports*.  
<sup>2</sup> STAFFORD, W. G. (1935) p. 168, 170.  
<sup>3</sup> IWEKA-NUNO, I. E. (1924) pp. 27-28.

<sup>4</sup> *Report of Cape Commission on Native Law* (1883). Appendix D, p. 281.  
<sup>5</sup> MEEK, C. K. (1925) I, p. 217.

nothing more to expect. From the same point of view, the husband who has paid for his wife is the owner of a child which she gets by anyone else."<sup>1</sup>

This same outlook and practice is reported among the Basuto: "When a wife is divorced, her family return the cattle which they received in payment for her. But if she has borne children, the cattle are not returned, it being held that the children have acquitted the debt."<sup>2</sup>

Among the Tsonga of the Transvaal, "in the Sibassa area, the husband on dissolution of the marriage may claim either the return of the *lobolo*; less two head of cattle for each female child, and one head for each male child, born of the marriage, or he may renounce his rights in the children and claim the full amount of *lobolo* paid."<sup>3</sup>

Finally among the Nilotes of the Sudan the Seligmans report what happens after divorce as follows. "If the bride-wealth is not returned the children will remain with their father but if it is returned — and this really constitutes divorce — the husband has to give up the children. The new husband who provides the bride-wealth will take the children and they will become members of his *kwa* . . . The position of children born out of wedlock shows the same principle as is seen in the treatment of children after divorce, viz. the importance of the bride-wealth in establishing sociological fatherhood, physiological fatherhood having no legal importance. If a girl

has one child before marriage the child belongs to the husband who provides the bride-wealth which would be the same as if she had no child. But, if she has two children then her father would keep them, they would be members of his *kwa* and he would accept less bride-wealth."<sup>4</sup> Divorce thus clearly shows that *lobolo* determines the social position of the children. If the *lobolo* is retained by the bride's group then the children have status in the payer's group. If the *lobolo* is refunded then the children have status in their mother's group. It is thus clear that *lobolo* pays for the transfer of the children's status in their mother's group to a status in the payer's group.

The position is summed up as follows. "A woman married under *lobolo* bears children but possesses none. The children belong to those who gave the cattle."<sup>5</sup>

Lowie, writing in 1948, remarks that in many societies the people are not interested in knowing who is the begetter of a child and illustrates his point from the Southern Bantu: "Thus in South Africa the purchaser of a bride *ipso facto* becomes the social father of her future children, whether these are conceived out of wedlock or not . . ."<sup>6</sup> The above remark would be an excellent summary of *lobolo*'s function if it had been syncopated into "the payer of *lobolo* becomes the social father of the woman's future children". Wedlock is not an essential concomitant.

### CONCLUSIONS

The conclusions set out in this article were fully reached as a result of long experience on the bench before I started to study under Malinowski. I found him vague and uncertain. Here are his blurred views on marriage and *lobolo*. He, unlike Radcliffe-Brown, describes marriage as a contract. "In no community whatever is marriage anything but an individual personal contract binding man

and woman."<sup>7</sup> Yet there is ample evidence to show that marriage among the Negro is not so much a personal affair as an inter-family or group affair. "A Mosuto even to-day, in mentioning the marriage of his daughter, will invariably say that she is married, not to 'that man' but to 'those people', mentioning the family."<sup>8</sup> Mrs. Krige writes: "In the protracted ceremonial that is

<sup>1</sup> LINDBLOM, G. (1920) p. 83. <sup>2</sup> CASALIS, E. (1861) p. 184. <sup>3</sup> RAMSAY, T. D. (1941) p. 18.

<sup>4</sup> SELIGMAN, C. G. and B. Z. (1932) p. 68.

<sup>5</sup> JUNOD, H. A. (1927) I, p. 281.

<sup>6</sup> LOWIE, R. (1948) Vol. 14, p. 145.

<sup>7</sup> MALINOWSKI, B. (1934) p. xvi.

<sup>8</sup> ELLENBERGER, D. F. and MACGREGOR, J. C. (1912) p. 274.

necessary for Bantu marriage the most important actors are the two families rather than the individuals."<sup>1</sup>

Professor Schapera writes: "Marriage was thus an affair involving two groups rather than two individuals, a fact which had many repercussions on the social and legal usages of the people."<sup>2</sup> Delano, a Yoruba says: "An important factor about it (an African marriage) is that it is an affair between two groups of people. It is not only that individuals are involved but two families and two sets of ancestors."<sup>3</sup> The Kriges write: "The most impressive of all the gift exchanges, however, involves the two groups of people between whom, by reason of a marriage, brides are exchanged against cattle."<sup>4</sup>

Malinowski repeats his contractual view of marriage elsewhere: "We can thus state first that marriage as a legal contract is but a part and parcel of that wider and more fundamental institution, the family. And we can define marriage as a public, legal and traditionally defined union by contract which gives the status of legitimacy to the children and an additional status to the married couple."<sup>5</sup> Yet all know that marriage is a status involving reciprocal obligations and duties on the lines of Malinowski's emphasis on reciprocity, and as such marriage differs entirely from a contract.

As lawyers do not regard marriage as a contract and as Malinowski does not define what he means by contract, his views on the contractual nature of marriage are of negligible importance. Furthermore, he discusses marriage without any reference to its contractual nature: "In certain forms of marriage the individual bond is completely established by social elements, such as infant betrothal or socially pre-arranged marriages."<sup>6</sup> Speaking more generally of marriage he writes: "The act of sexual union . . . does not constitute marriage. A special form of ceremonial sanction is necessary and this type of social act differs from the taboos and inducements of which we

spoke in the previous chapter. We have here a special creative act of culture, a sanction or hallmark which establishes a new relation between two individuals . . . But after matrimony has been sociologically sealed and hallmark, a number of duties, ties, and reciprocities are imposed, backed up by legal, religious and moral sanctions."<sup>7</sup> Not one word about the contractual aspect of marriage is discernible. Hence one asks in vain of Malinowski, is, or is not marriage a contract? Here is another instance of his vagueness.

Radcliffe-Brown, expressly declares that marriage is not a *contract*: "A marriage is not a *contract*, though a promise to marry may be. A marriage is a union, and, at any rate for the woman, involves a change in status."<sup>8</sup> Here, once again, where these two anthropologists have differed it is shown that Radcliffe-Brown is right, and Malinowski wrong.

In spite of claiming to be a functionalist, Malinowski's views on the function of *lobolo* are hazy. "In 'marriage by purchase' the presents given by the bridegroom were, as a rule, regarded as 'bride-price' in the literal sense, and the act was given the strictly economic interpretation of a purchase of the bride."<sup>9</sup>

Elsewhere he writes: ". . . the so-called bride-price is never a commercial transaction, but a legal device with complex but perfectly clear and fully obvious economic, juridical and religious functions."<sup>10</sup>

For Malinowski economics, juridical functions and religion were distinct human institutions. One may be pardoned for asking thereafter what is the function of bride-price, in spite of the fact that he endeavours to reassure us and himself over its dubiety by saying that it is perfectly clear and obvious what bride-price is. However, he has written further on the same subject: "Another type of marriage gift is the *lobolo* found among the patrilineal and patrilocal communities of the South Eastern Bantu . . . Marriage is concluded by the payment of cattle . . . The

<sup>1</sup> KRIGE, E. J. (1937) p. 114.

<sup>2</sup> SCHAPERA, I. (1934) p. 9.

<sup>3</sup> DELANO, I. (1945) p. 30.

<sup>4</sup> KRIGE, E. J. and J. D. (1943) p. 65.

<sup>5</sup> MALINOWSKI, B. (1944) p. 206.

<sup>6</sup> MALINOWSKI, B. (1937) p. 230.

<sup>7</sup> MALINOWSKI, B. (1937) pp. 202, 203.

<sup>8</sup> RADCLIFFE-BROWN, A. R. (1929) p. 131.

<sup>9</sup> MALINOWSKI, B. (1934) xlviii.

<sup>10</sup> MALINOWSKI, B. (1944) p. 80.

cattle are known as the *lobolo* or 'bride-price' as is the current but 'incorrect anthropological expression ... The *lobolo* is thus rather a symbolic equivalent representing the wife's economic efficiency, and has to be treated as a deposit to be spent on another marriage.'<sup>1</sup>

*Lobolo* is quite a favourite topic with Malinowski. He has yet another attempt at telling us what its real nature is: "It (*lobolo*) has reappeared under new forms and with a partly changed meaning simply because its real nature was not the purchase of a girl by a man but the establishment of legitimacy, a guarantee for the stability of marriage, and an equitable equivalent for the loss to her parental family of her reproductive power."<sup>2</sup>

Before, we were told what *lobolo* "clearly was", now we are told what it "really is". Yet he had written, "the only worthy aim is to study the part which is played by any one factor of a culture within the general scheme". The part that *lobolo* plays in the general scheme of Negro culture has been the aim of this article. For the founder of functionalism so to miss the function of *lobolo* shatters one's faith in his theories.

Had Evans-Pritchard realized that marriage and *lobolo* were two distinct institutions he would not have written as follows: "In true marriage, ghost-marriage, leviritic marriage and widow-concubinage a mother is always legally married and all her children belong in virtue of her marriage to her husband's lineage and clan."<sup>3</sup> The children belong to the husband's group because *lobolo* was paid for them and not because of any marriage. Marriage is the social recognition of sexual relationships between a man and a woman; if these conform to an approved pattern for their society the persons are correctly married. Marriage does not necessarily fix the destiny of the children; *lobolo*, where it operates, does. Yet Evans-Pritchard can see quite clearly that among the Nuer, whether married or not, the begetter, whether it is himself or his proxy, as in levirate and ghost-marriages, has to pay for the right to keep his children, and he says so

quite plainly. "The social principle of agnatic descent is, by a kind of paradox, traced through the mother, for the rule is that in virtue of payment of bride-wealth all who are born of the mother are children of her husband. Thus all the children of a woman may be children of a man whom their mother has never seen. Or a woman may bear children by many men yet they all have one pater. Or, yet again, a woman may bear a child by a man to whom she is not married and to whom she never will be married, but this man is her child's pater by payment of a fee."<sup>4</sup>

Evans-Pritchard might have rounded off this rule by including in the above summary the fact that when a Nuer woman pays *lobolo* on another woman, the *lobolaed* children belong to the payer by virtue of the *lobolo* paid and not by any marriage — in other words, there are no exceptions to the rule that *lobolo* buys the right to the children.

Many others have, as I have already stated, realized that *lobolo* buys the right to the woman's children, nevertheless, I shall quote a few more authorities in this vein: "One usually hears the term 'wife-purchase' applied to such an arrangement (*as lobolo*) but that is not the savage idea at all. What is bought or earned is the right to own the children."<sup>5</sup> Brown, who lived among the Bechuana for many years, writes thus: "While the Bechuana deny that the *bogadi*, that is, the cattle given by a bridegroom or his family to the family of the bride, is a purchase price paid for a wife, yet they do admit that it is a price paid for the children she may bear... This undoubtedly shows that it is the offspring that are contracted for in the bride-price or *bogadi*."<sup>6</sup> "In paying *bogadi* for a woman a family buys her reproductive power."<sup>7</sup>

"Even an unmarried woman may marry another woman by paying a bride-price, and having procured a man to live with her 'bride' would claim any children born. This custom which is found in numerous Nigerian tribes, shows that a main object in this bride-price custom is to obtain the custody of the children."<sup>8</sup>

<sup>1</sup> MALINOWSKI, B. (1927) Vol. 14. p. 944.

<sup>2</sup> MALINOWSKI, B. (1945) p. 53.

<sup>3</sup> EVANS-PRITCHARD, E. E. (1945) p. 19.

<sup>4</sup> EVANS-PRITCHARD, E. E. (1945) p. 64.

<sup>5</sup> MARRET, R. R. (1937) p. 56

<sup>6</sup> BROWN, J. T. (1926) pp. 60, 62.

<sup>7</sup> WHITFIELD, G. M. (1948) p. 209.

<sup>8</sup> MEEK, C. K. (1937) p. 276.

Rattray makes it quite clear that in parts of Ashanti *lobolo* and marriage are quite distinct institutions: "All I receive for a daughter is the millet which her future husband will bring when she is still a child. When she reaches the age of puberty, these gifts cease." These *mi-guine* (millet baskets) are all that is necessary to constitute a legal marriage, and with 20 cauries which a man may give a girl when courting her and 100 cauries when he marries, are all the expenses incurred.

"This interesting custom and explanation go far to prove what the student of the marriage customs described in these volumes must have suspected to be the case, i.e. that the larger payments, demanded quite apart from the preliminary, generally small expenses (which make the marriage legal) were in the nature of payments by the husband's group for the children."<sup>1</sup>

"What the bride-price buys in marriage of dominion is the child-bearing power of the woman and the services that ought to be rendered by a wife and mother . . . What he bought was child-bearing power, and if it is found to be non-existent (through barrenness), he can reclaim what he paid for it."<sup>2</sup>

As one would expect from a man who lived most of his life among the Bantu, Livingstone correctly understood the function of *lobolo*. "Wives are not bought and sold among the *Makololo*, although the marriage looks like a bargain. The husband, in proportion to his wealth, hands over to the father-in-law a certain number of cows, not as purchase money for the bride, but to purchase the right to retain in his own family the children she may have; otherwise the children would belong to the family of the wife's father."<sup>3</sup>

Monica Hunter points out that *lobolo* buys the children for she writes that among the Pondo there is a proverb, "the child followed the *lobolo*'. I overheard Umthelho fondling a small grandchild murmur, 'It was for you that all my cattle went' . . . The passage of cattle deter-

mines the group to which the child shall belong."<sup>4</sup>

Dr. Mayer after having shown that among the Gusii there are the two separate institutions of (a) marriage-*enyangi*, and of (b) *lobolo*, — *nyaika*, is satisfied that *lobolo* purchases for the payer the status of the children from the woman concerned. "What the bride-wealth mechanism as such is mainly designed to protect, is not the exclusive right to that woman's society nor even to her sexual enjoyment, but the 'exclusive right over her off-spring."<sup>5</sup>

Miss Margaret Read made the point quite clear in 1938: "But the essential feature in the *lobolo* system is the legal custody of the children. By giving cattle in *lobolo* a man assures that his children by the *lobolo*'d wife belong to his family, who are responsible for them in the case of the death of either the mother or the father."<sup>6</sup>

Professor Lestrade in 1926 wrote to the same effect on the Bahurutshe. "No children are the legitimate sons of their father unless that contract (of *bogadi*) has been made, whether or not fulfilled, in respect of their mother. No man can claim, for any purposes, the children he has by any woman until he and his family, on his own behalf or on behalf of some other male relation whose representative he is, have contracted to pass, and under certain circumstances until they have actually passed, the said bride price."<sup>7</sup>

Dr. Nadel in a somewhat round about way comes to the same conclusion that *lobolo* is the child-price. "But the bride-price is nevertheless a 'price', paid for an unusual commodity — the fertility of the woman — which the clan into which she was born releases for the benefit of the clan into which she marries. The aspect of the bride-price is revealed most clearly in the rules governing dissolution of marriage, either through death or divorce. Widows . . . are expected to remarry in a modified form of levirate, i.e. to marry a brother or at least a clansman of their late husband. No bride-price is payable in such a marriage, which preserves the woman's fertility for the clan. If the widow marries outside her late

<sup>1</sup> RATTRAY, (1932) II, p. 521.

<sup>2</sup> WILLoughby, W. C. (1923) pp. 111, 112.

<sup>3</sup> LIVINGSTONE, D. C. (1865) p. 285.

<sup>4</sup> HUNTER, M. (1936) p. 190.

<sup>5</sup> MAYER, P. (1950) p. 57.

<sup>6</sup> READ, M. (1938) p. 33.

<sup>7</sup> LESTRADE, G. P. (1926) p. 938.

husband's clan, her new husband has to refund the bride-price to her brother-in-law who would otherwise have married her in levirate. Divorce, on whatever grounds, similarly implies the refund of the bride-price to the ex-husband. Until this final dissolution of the marriage contract; i.e. until the bride-price has been refunded, all children born by the woman — legitimate or illegitimate — are her husband's and belong to his clan. In our phraseology, her 'fertility' has not yet been redeemed, although the matrimonial union in the physical sense may have been dissolved long ago . . . Children born of an illicit union 'belong to the bride-price', i.e. the legal husband can claim all children born or even conceived by his wife until he has received the refund of the bride-price . . . The aspect of the bride-price as a price paid for the fertility of the woman is manifest in the common rules of levirate marriage, in the equally familiar rule that 'children go with the bride-price' and, above all, in the regulations concerning the refund of the bride-price. A refund of the bride-price is admissible both in divorce and in the case of the wife's death. If the marriage had been childless, the bride-price must be refunded in *toto*, including the main payments as well as the initial and final gifts of goats for the sacrifices in the bridal home. A deduction is made for each child born, thus, in divorce: for one child, one cow; for two children, three cows out of eight; if there are four or more children, only a nominal refund of one cow is admitted; in the case of the wife's death, for one child, one or two cows are deducted; for two children, roughly half the bride-price; if there are three or more children, only one cow is refundable . . .<sup>1</sup>

Professor Linton holds the view that *lobolo* is the child-price: "The man's group usually gives a consideration of some sort to the woman's group, i.e. a bride-price, and in return the woman's group abrogates part of her rights with them and relinquishes all rights to her children."<sup>2</sup>

Professor Herskovits is quite definite that *lobolo* determines the status of the children of the

woman: "Perhaps the question of whether or not the head of a family owns his wives and children might best be resolved for Dahomey if the answer were stated somewhat in this form: when a man pays for his wife, he does not own her, but he compensates his wife's people for their renunciation of any offspring resulting from the marriage."<sup>3</sup>

Radcliffe-Brown, after some hesitancy, comes ultimately to this same conclusion: "Thus if we wish to use the word 'purchase' (in connection with *lobolo*) it would be much nearer the truth to say that by the payment of the *lobolo* cattle a man purchases his children (not his wife), i.e. acquires over them certain specific legal rights."<sup>4</sup> Sir James George Frazer also accepts the principle that *lobolo* buys the right to the children: "Thus it would seem that among the Toradjas the bride-price is really paid for the children, not for the wife: a man earns his wife by serving her parents, he earns his children by paying for them . . . similarly in some African tribes the bride-price at marriage appears to be intended to buy the children who are to be born rather than the wife who is to bear them. Hence in these tribes, if a man pays nothing for his wife, his children do not belong to him but to his wife's father or maternal uncle, and he can only obtain possession of his own offspring by paying for them."<sup>5</sup>

All that I have done is to crystalize this unanimity in the term, "child-price".

It is absurd to think that certain peoples invented *lobolo* because they wanted to get married as is indicated by the remark that marriage without *lobolo* is inconceivable. What becomes apparent is, that in certain societies the children of a woman retained their status and position in their mother's group. To transfer this status and position of the child to another group a payment was made. This payment effected its object and so little did marriage come within the scheme that marriage was not necessary at all, any payer could thus effect the transfer of the status of a woman's children, hence *lobolo* paid by women was equally effective in transferring the status

<sup>1</sup> NADEL, S. F. (1947) p. 117, 226, 402. <sup>2</sup> LINTON, R. (1936) p. 172. <sup>3</sup> HERSKOVITS, M. J. (1938) I, p. 86.

<sup>4</sup> RADCLIFFE-BROWN, A. R. (1924).

<sup>5</sup> FRAZER, J. G. (1919) II, p. 356.

of the children from their mother's group to that of the *lobolo* payer's group.

*Lobolo* changes the status of the child from its social position among its cognates to that of its position in the group of the payer of *lobolo*. One has to say "payer of the *lobolo*" because, though normally the payer of the *lobolo* is also the penile father of the child, he may at times be only the cultural father — a position that also arises in cases of adoption — i.e. where some other man is the begetter, and finally the *lobolo* payer as we have seen may at times be a woman. In each case the *lobolo* changes the status of the child from that of its position among its cognates to its position among its agnates, using "agnate" to cover all types of *lobolo* payers.

If, as I maintain, the *lobolo* is the payment that fixes the status of the child in a definite family, then if a child's status and its ensuing inheritance is to be altered by transferring it from one family to another that transfer can be effected by a payment. This principle is found in operation on the Gold Coast, where, without breaking up the family, the bride's family can buy back from the bridegroom's family a child whose status his father purchased by paying *lobolo*. It is here called buying "the right of use" over the child. Thus writes Danquah of this custom of *Tamboba* prevalent among the Akan tribes. "It is a payment made by the wife's family if they have to deprive the father of his 'right of use' over any of his children for some reason, e.g. if the child is needed for service as a priest of the lineage *obosom*, or to take some inheritance in the maternal family. There is a fixed sum for a daughter or a son which is payable to the father on such an occasion."<sup>1</sup>

Enough evidence has now been marshalled to show that in many Negro African societies, marriage and "child-price" are two distinct and separate culture traits and can exist independently of each other and are not dependent on each other, though in most normal marriages they are combined, but this analysis rather upsets the resounding dictum that "marriage without *lobolo* is inconceiveable".

The evidence also makes it clear that there is one undeviating principle behind *lobolo* and that is the purchase of the right to the children, or more precisely, *lobolo* is "child-price". "The fact seems to be overlooked not only by Mr. Young, that bride-price, whatever ideas may lie behind it, is a payment; any suggested equivalent which fails to convey this fact is misleading."<sup>2</sup> The term "child-price" emphasizes the payment, and the word "child" indicates what is purchased. This term also avoids the objections raised by the Seligmans to the use of a foreign, i.e. Greek or Latin term<sup>3</sup> for such transactions, i.e. for *lobolo*.

When it comes to dissolving such marriages two principles are involved, first the restoration of the *status quo ante*, and secondly the terms under which the *lobolo* may be refunded.

Briefly, under Native custom, whatever be the causes for the divorce, the *lobolo* refunds are, no children, full *lobolo* returnable; or if children exist and if children follow the mother, full *lobolo* returnable; or if children exist and remain with the father, either no *lobolo* is returnable or a deduction of so many head per child born (not necessarily now alive) is made and the balance is returnable. Thus the fundamental conception behind all *lobolo* transactions is that *lobolo* is the child-price.

#### REFERENCES

AJISAFE, A. K. *The Laws and Customs of the Yoruba People*. (London: 1924)

BRODRICK, G. E. P. Betrothal ceremony among the Wazeruru of the Salisbury District. *NADA*. (Salisbury: 1945)

BROWN, J. T. *Among the Bantu Nomads*. (London: 1926)

BULLOCK, C. *The Mashona*. (Cape Town: 1927)

— *The Mashona and the Matabele*. (Cape Town: 1950)

<sup>1</sup> MANOUKIAN, M. (1950) p. 28. <sup>2</sup> RAGLAN, (1931) p. 284. <sup>3</sup> SELIGMAN, C. G. and B. Z. (1931) p. 236.

CASALIS, E. *The Basutos*. (London: 1861)

CHAPPLE, E. D. & COON, C. S. *Principles of Anthropology*. (New York: 1942)

COOK, P. A. W. *Social organisation and ceremonial Institutions of the Bomvana*. (Cape Town: 1931)

DANQUAH, J. B. *Akan Laws and Customs*. (London: 1928)

DECLE, L. *Three Years in Savage Africa*. (London: 1898)

DELANO, I. *An African Looks at Marriage*. (London: 1945)

DICKE, B. H. Notes on some Customs arising out of Bantu marriage. *S.A. J. of Sci. Vol. XXVII.* (1930)

DOKE, C. M. *The Lambas of Northern Rhodesia*. (London: 1931)

DOMVILLE-FIFFE, C. W. *Savage Life in the Black Sudan*. (London: 1927)

DRENNAN, M. R. *A Short-course in Physical Anthropology*. (Cape Town: ?)

DRIBERG, J. H. *The Lango*. (London: 1923)

DUNDAS, C. *Kilimanjaro and its People*. (London: 1924)

ELLENBERGER, D. F. & MACGREGOR, J. C. *History of the Basuto*. (London: 1912)

EVANS-PRITCHARD, E. E. "An alternative name for 'Bride-price'." *Man*. (London: 1931)

— "Some Aspects of Marriage and the Family among the Nuer." *Livingstone*: 1945)

— "Bride-wealth among the Nuer." *African Studies*. (1947)

FELLOWS, L. E. H. Unpublished Govt. Report on the Ijaw. (1932)

FRAZER, J. G. *Folk lore in the old Testament*. (London: 1919)

GLUCKMAN, M. "Kinship and Marriage among the Lozi of Northern Rhodesia & the Zulu of Natal" in *African Systems of Kinship and Marriage*. (Oxford: 1950)

HADDON, A. C. *History of Anthropology*. (London: 1934)

HAILEY, Lord. *An African Survey*. (Oxford: 1939)

HARRIES, C. L. *Laws and Customs of Bapedi and Cognate Tribes*. (Johannesburg: 1929)

HARRIS, J. S. "Some Aspects of the Economics of sixteen Ibo individuals." *Africa*. (London: 1944)

HAYLEY, T. T. *The Anatomy of Lango Religion and Groups*. (London: 1947)

HERSKOVITS, M. J. *Dahomey*. (New York: 1938)

HUGGARD, I., *Consistency Reports*.

HUNTER, M. *Reaction to Conquest*. (London: 1936)

HUNTINGFORD, G. W. B. Bride-price in Antiquity: further alternatives for the Term: *Man*. (London: 1931)

IWEKA-NUNO, I. E. *History of Obosi and Iboland in Brief*. (Obosi: 1924)

JAMES, E. O. *Primitive Ritual and Belief*. (London: 1917)

JANSEN, E. G. *Natal Code of Native Law*. (Johannesburg: 1945)

JEFFREYS, M. D. W. African Marriage Laws, etc. *Congrès International des Sciences Anthropologiques et Ethnologiques*. (London: 1934)

— Govt. Memo. W. P. 937/286 of 13.9.1935. (Warri: 1935) (unpublished)

— Unpublished. Govt. Report. Bamenda, British Cameroons. (1942)

JENNINGS, A. E. *Bogadi*. (Vryburg: 1933)

JONES, R. C. *Census of Nigeria 1931*. (London: 1932)

JOYCE, G. H. *Christian Marriage*. (London: 1933)

JUNOD, H. A. *The Life of a South African Tribe*. (London: 1927)

KRIGE, E. J. *The Social System of the Zulu*. (London: 1936)

— "The Phalaborwa and the Mamba complex." *Bantu Studies*. (Johannesburg: 1937)

KRIGE, J. D. "The significance of cattle exchanges in Lovedu social Structure." *Africa*, Vol. XII. (London: 1939)

KRIGE, E. J. *The Realm of a Rain Queen* (London: 1943)

LESTRADE, G. P. "Some notes on the Bogadi system of the Bahurutse." *S.A.S. of Sci. Vol. XXIII.* (1926)

LINDBLOM, G. *The Akamba*. (Uppsala: 1920)

LINTON, R. *The Study of man*. (New York: 1936)

LIPPERT, J. *The Evolution of culture*. (London: 1931)

LIVINGSTONE, D. *Journeys and Researches in South Africa*. (1857)

LIVINGSTONE, D. & C. *Narrative of an Expedition to the Zambezi and its Tributaries*. (London: 1865)

LOWIE, R. *Primitive Society*. (London: 1921)

LUGARD, Sir. F. D. *The Dual Mandate*. — "Social Organization." *Encyclopedia of the Social Sciences* (New York: 1948)

LUGARD, Sir. F. D. *The Dual Mandate*. (London: 1929)

LUTTIG, H. G. *The Religious system and social Organisation of the Herero*. (Utrecht: 1933)

MALINOWSKI, B. *Marriage*. (*Encyclopedias Britannica*) (London: 1927)

— *Introduction to Law and Order in Polynesia*, by H. J. Hogbin. (London: 1934)

— *Sex and Repression in Savage Society*. (London: 1937)

MALINOWSKI, B. *A Scientific Theory of Culture*. (New York: 1944)

— *The Dynamics of Culture Change*. (Oxford: 1945)

MAIR, L. *Native Marriage in Baganda*. Memo. XIX of T.T. of A.L. & C. (London: 1940)

MANOUKIAN, M. *Akan and Ga-Adangme Peoples of the Gold Coast*. (Oxford: 1950)

MARQUARD, L. & STANDING, T. G. *The Southern Bantu*. (London: 1939)

MARRET, R. R. *Man in the Making*. (London: 1937)

MARWICK, B. A. *The Swazi*. (Cambridge: 1940)

MAYER, P. *Gusii Bride-wealth Law and Custom*. (Oxford: 1950)

MEEK, C. K. *Northern Nigeria*. (Oxford: 1925)

— *Tribal Studies in Northern Nigeria*. (London: 1931)

— *Law and Authority in a Nigerian Tribe*. (Oxford: 1937)

MOLEMA, S. M. *The Bantu: Past and Present* (Edinburgh: 1920)

NADEL, S. F. *The Nuba*. (Oxford: 1947)

PEARSALL, M. "Distribution of Variations of Bride wealth in the East African Cattle Area." *South Western Journal of Anthropology*. Vol. 3, No. 1. (1947)

PERISTIANY, J. G. *The Social Institutions of the Kipsigis*. (London: 1939)

PIDDINGTON, R. *An Introduction to Social Anthropology*. (London: 1950)

PITJE, M. "Traditional Systems of male Education among the Pedi and cognate Tribes." *African Studies*. (1950)

PLANIOL, M. *Traité élémentaire de Droit-Civil*. (Paris: 1925)

POSSELT, F. W. T. "Native Marriage." *NADA*. (Salisbury: 1926)

POWYS-JONES, L. "Tsu-Mutambo." *NADA* No. 6. (Salisbury: 1928)

PURCHAS, S. *Purchas his Pilgrims* (Glasgow: 1905)

QUIGGIN, H. L. & HADDON, A. C. *Man: Past and Present*. Keane. (Cambridge: 1920)

RADCLIFFE-BROWN, I. R. "Lobolo." Letter. *Cape Times*. Cape Town: January 1924)

— "Bride-price, Earnest or Indemnity". *Man*. (London: 1929)

RAGLAN, Lord. "Bride-price." *Man*. (London: 1931)

RAMSAY, T. D. *Tsunga Law in the Transvaal*. (Bushbuckridge: 1941)

RATTRAY, R. S. *Trades of the Ashanti Hinterland*. (Oxford: 1932)

READ, M. *Native Standards of Living and African Culture Change*. Supplement to *Africa*. (London: 1938)

*Report, Govt. Report and Proceedings with Appendices of the Government-Commission on Native Laws and Customs*. (Cape Town: 1883)

RIDGEWAY, W. *The Early Age of Greece*. (Cambridge: 1931)

ROGERS, H. *Native Administration in the Union of South Africa*. (Pretoria: 1949)

SCHAPERA, I. *Western Civilization and the Natives of South Africa*. (London: 1934)

— *The Bantu Speaking Peoples of South Africa*. (London: 1937)

— *Handbook on Tswana Law*. (London: 1938).

— *Married Life in an African Tribe*. (London: 1939)

SCHOLTEN, P. *Nederlandsch Burgerlijk Recht*. (Zwolle: 1923) \*

SELIGMAN, C. G. & B. Z. "Social Organization of the Lituko." *Sudan Notes and Records*. (1925)

— "Bride-price." *Man*. (London: 1931)

— *Pagan Tribes of the Nilotic Sudan*. (London: 1932)

SIMONS, H. J. "The Law & its Administration" in *Handbook on Race Relations in South Africa*. (London: 1949)

SCHROPSHIRE, D. W. T. *Primitive Marriages and European Law*. (London: 1946)

STAFFORD, W. G. *Native Law as Practised in Natal*. (Johannesburg: 1935)

STAYT, H. A. *The Bavenda*. (Oxford: 1931)

SUMNER, W. G. & KELLER, A. G. *The Science of Society*. (New Haven: 1946)

THURNWALD, R. "The Social Systems of Africa." *Africa*. (London: 1929)

TORDAY, E. "Bride-price, Dower or Settlement." *Man*. (London: 1929)

— "The Principles of Bantu Marriage." *Africa*. Vol. II. No. 3. (London: 1929)

— "Bride-price, Dower or Settlement." *Man*. (London: 1931)

VAN TROMP, J. *Xhosa Law of Persons*. (Cape Town: 1948)

VAN WARMELO, N. J. & PHOPHI, W. M. D. *Venda Law*. (Pretoria: 1948)

WESTERMARK, E. *Marriage*. No. 49. Benn Series. (London: 1929)

WHITFIELD, G. M. B. *South African Native Law*. (Johannesburg: 1948)

WILLOUGHBY, W. C. *Race Problems in the new Africa*. (Oxford: 1923)

YOUNG, G. *Contemporary Ancestors*. (London: 1940)

# SOME AFRICAN ROYAL BURIALS AND CORONATIONS IN WESTERN TANGANYIKA<sup>1</sup>

C. H. B. GRANT

## SYNOPSIS

The localities concerned lie on the eastside of Lake Tanganyika, between the Uha and Ufipa Districts. The burial customs of 22 chiefdoms and the coronation customs of 17 chiefdoms are examined. To avoid repetitions these customs are presented in tabular form. The bodies of chiefs are sewn up in either red and white oxhides or in black ones. In many the skull is buried separately from the body. A number of burials are water or river burials, otherwise remains are placed in boxes supported on trestles in a hut.

A feature is a special group of morticians.

The coronation ceremonies take place outside the village. The chief, having previously been dressed in his hut, is escorted to the spot, stands on the stool (throne) and a head-dress is then placed on his head. Among a number of chiefdoms the new chief then shoots an arrow into the air. The chief returns to the village, sits on the stool with a royal spear in his hand, receives presents and the homage of his people.

The Kibunga shell is the main item in the royal regalia. The head-dress is made from the tail and rump of a lion skin. Thereafter there is variation in the dress and ornamentation of the chief. Leopard, serval and duiker skins are used in all the royal robes. Bracelets and anklets of lion or leopard skin are worn generally on the right arm.

The succession to the chieftainship and the totems are also discussed.

THE localities concerned lie on the east side of Lake Tanganyika between the Uha and Ufipa Districts. The burial and coronation customs of a number of chiefdoms are examined and to avoid repetition these customs are presented in tabular form.

## BURIAL CUSTOMS

In Ujiji, Ukaranga and Uvinza which lie north of the Malagarasi River, the chiefs have the same burial rites as their *confrères* of Kasulu District. The father of Kwezi (one of the three sultans of Uvinza) is buried at a hill called Toni, close to Bubanzira Lake, but the reason for his being buried in this spot has not come to light. The totem of the chiefs of Ujiji is the *Kenda*, the

grey monkey, and *Nkona*, the bateleur eagle; of the chiefs of Ukaranga, the black ox; and of the chiefs of Uvinza, *Mwilwa*, a small river fish, the proper local name being *Ligani*. As with the Abaha, the python is held sacred by the people of Uvinza.

The Abaha legend is: "When the first Mteko was installed and given power to *tambika*, Mi-

<sup>1</sup> Similar customs for the chiefs of the Abaha and Tusi tribes were described by me in the *Journal of the Royal Geographical Society*, November 1925.

rumba and Minyara were planted round his hut. Into these trees during the heavy rains a python fell, remaining in exactly the same spot for five years, and the Mteko became so used to it that it became like a brother to him. Ever since the python and Mteko have been brothers."

Tongwe lies south of the Malagarasi River and here we find a set of customs all their own, but with a close relationship one to the other throughout the whole area. These interesting customs and ceremonies are set out in the table. No cattle have existed since 1924 on the Sibimbi Plateau, and the chief cannot afford to buy any, the question of sacrificing beasts to the spirits of the dead chiefs is covered by an old leg bone being placed before the burial place. With the other chiefs of Tongwe (excepting Lubalize and Usenga) the corpse is first decomposed on a trestle, this process being aided by water poured over the body. This is usually done within the deceased chief's hut, and sometimes fat is burnt to counteract the smell of the decaying body.

We have yet to learn the significance of these curious customs, but in the case of the removal and special burial of the head and of the right hand, do we not see the head that wears the crown and has the brains to guide the tribe in peace and war, and the hand that holds the sceptre and has the power to give and take away? The reason for the special burial of the left foot of the chiefs of Butwambo seems quite obscure, though we notice that the Kibangwa and lion skin is worn both on the right foot and left foot in the crowning ceremonies; but so it is with other chiefs who do not have the foot removed for special burial. Further, in cases where the left wrist is honoured with the Kibangwa and lion skin, the right hand is given special burial. Although the names Bagila and Itabame occur most frequently, we do not see their connection with the origin of the chief in the way as we do with the totems. The burial places and the undertakers are taboo to the chiefs.

### BURIALS OF CHIEFS

<i>Tribe</i>	<i>Place</i>	<i>Morticians and their duties</i>
1. Ujiji	Kachaso in Manyora	
2. Ukanga	Luam bamwami, near Msofesi	
3. Uvinza	Kabyango Hill near the ruins of Ru-chugi post	Wajili.

### TRIBES FROM TONGWE

4. Buyenze	Body is sewn up in a red and white ox-hide and is then buried among the rocks at the source of the Mugondolwe River	Bagila.
5. Busondo	Successor puts white mark on forehead of deceased whose body is sewn up in a red and white ox-hide and is then sunk in a deep natural well called Uziba, up the Buloseli River, a tributary of the Nguye.	Bagila or Wagabi.

6. Ubende	Skeleton wrapped in sheep skins is buried in the Kabanga copse in the Malimba River.	Bagila. The grave is covered with branches of the <i>Tubumbo</i> and <i>Bugongo</i> trees. A hut is built over the grave which is fenced off with little poles of <i>Mninga</i> , <i>Tubumbo</i> and <i>Bugongo</i> .
7. Matale	Procedure similar to that of the Ubende: remains are buried in the Ikola copse near Mount Kabosi	Bagila. No hut over the grave which is then fenced off with any handy timber.
8. Matete	Skeleton wrapped in sheep skins and put in a bark box and placed in Tabame copse near Lugaba Hill	Babila. Place bark box on a trestle, which is then enclosed by a fence of live <i>Tubumbo</i> poles.
9. Isenge	Skull in bark box and with bones is buried in the waters of the Munhazi River	
10. Mgobwe	Bones in a black ox-hide are buried in Kambwiye pool up the Lugufu River, the skull in a bark box is put in the Itabame rocks on Kasalala Hill west of the Misositano Mountains and near the Lugufu River. New chiefs six days after the burial gives a sheep to the Bagila.	Bagila.
11. Ulimba	As above but the pool and the hill are in the Ulimba territory	Bagila.
12. Ushamba	Skull in one bark box, bones in another are taken to Ibozabwi copse near the Sambala River on the west of Santembe Hill	Bagila Boxes placed on trestles, hut is built over them and enclosed with a fence of live <i>Tubumbo</i> poles.
13. Bugwe	Skull in a bark box, bones wrapped in sheep skins and taken to the Itambame copse near the sources of the Wigo River, and tributary of the Malufesi.	Bagila Boxes placed on trestles: hut is built over them and enclosed with a fence of live <i>Tubumbo</i> poles.
14. Bulamata	Skull in a bark box, bones in a <i>miombo</i> bark bag are taken to the Itabame copse, near Kankala Hill on the Lufurisi River.	Bagila. Box and bag placed on trestles, a hut is built over them and enclosed with a fence of live <i>Tubumbo</i> and <i>Mninga</i> poles.
15. Bulindwa	Skull in a sheep skin in a bark box, bones in sheep skins in another box are taken to the Itamabe copse, on the Kaganza River, a tributary of the Lugufu.	Bagila. Boxes are placed on a trestle, a hut is built over them and enclosed with a fence of live <i>Tubumbo</i> and <i>Mibanga</i> poles.

## 16. Busongoro

The skull and right hand are wrapped in sheep skin (in the early days a white cow skin was obtained from the Buka) and placed in a bark box; the bones in sheep skins in a separate box are taken to the Itamabe copse on the Nyenge Stream, or tributary of the Siangwa.

## Wafialombe.

Boxes are placed on a trestle, the box containing the skull and right hand is dabbed with spots of white paint, and fenced off with live poles of Rubumbu and dead ones of *Mubanga*.

## 17. Bukambe

The skull and right hand, wrapped in a sheep skin and placed in a bark box, the bones in sheep skins are placed in another box and are placed in the Amasimbo cave at the sources of the Lujega River.

## Wafialombe.

Boxes are placed on trestles in the cave and the box with the skull and right hand is dabbed with spots of red and white paint. The entrance is closed with a fence of live *Minga* and *Kipando* poles which remain until entrance is required for the burial of another chief.

## 18. Butwambo

Skull, right hand and left foot wrapped in a sheep skin are put into a bark box, bones are wrapped up in a white cloth, and are taken to the Amasimbo copse at Katabé Hill in the south east side of Mount Manyangwa.

## Mugabe.

The box is placed on a trestle, the bones in the white cloth are buried in the ground alongside the trestle. A hut is built over the trestle and grave and is fenced off with live *Milama* and *Misonwasigansa* poles which, however do not grow.

## 19. Ngondo

Copse sewn in sheep skins, after decomposition skull and right hand are placed in a bark box which the new chief marks with the Pemba sign, i.e. red and white rings, bones and box taken to Itabame copse on the Luegere River about two hours above Kapula.

## Bagila.

Box is placed on a trestle, bones, buried and covered with sticks.

## 20. Lubalize

Skull and right hand placed in a bark box, bones buried in the earth, bark box taken to Ikomanilundi corpse near Katumungulu Hill at the sources of the Lubalize River.

## Kasaze.

Box is placed on trestle supporting the bark boxes containing the relics of previous chiefs.

## 21. Usenga

Decapitated body wrapped in white and blue cloth and placed in a long bark coffin and is then buried in the chief's village. The head is first wrapped in a red and then in a blue cloth and finally in a

## Bagila.

Box is placed on trestle and a hut built over it which is enclosed in a fence of live *Mninga*, *Kabumba* and *Mipanda* poles.

sheep skin and placed in a bark box which is marked with the Pemba sign. This box is then taken to the Itabame copse at Nyenji Mountain.

## 22. Butandula

Not known how the burial is carried out but the chiefs are buried in Bombwi copse at the foot of the western Butandula Mountains.

## CROWNING CUSTOMS

In the crowning ceremonies the major rites are the same for all, but they differ in the dress and adornment of the person. The actual crowning actually takes place outside the village, the chief having previously been dressed in his hut. He is escorted to the spot and stands on the stool (throne) and, at the correct moment, the head-dress is placed on his head from the back by a native appointed for this purpose. In case of Busongoro, Butwambo, Isenge, Bulamata, and Bukombe, the newly crowned chief shoots an arrow into the air. The ceremony over, the chief returns to his village and sitting on the stool with the royal spear in his hand, receives presents and the homage of his people. New chiefs of Ushamba and Busondo also hold the royal bow and arrows in the left hand, and Ulimba, Mgobwe, and Isenge have a spear in each hand. With some the new chief comes leaping out from the hut, and after being crowned goes leaping back to the village.

A new chief of Ulimba, or Mgobwe, has two of his wives sitting on stools on his left hand, one holding a spear and a porridge mixer, and the other a spear and a hoe. In the case of Butwambo the spear is not held in the hand but stuck in the ground close to the new chief where a specially built Mwiko hut has been erected.

Busondo has a curious rite, apparently on its own, for after its chief is crowned and returns to the village, a witch doctor kills a chicken, splits it open, examines the grit in its gizzard, and there finds some white beads. These he strings together, and taking a wing bone breaks off two

pieces from it and ties each piece to each end of the string of beads. This he ties round the new chief's neck as a sign that he is now chief. Dancing and feasting conclude the day's festivities. It costs money to be crowned and many chiefs are too poor to put up the money, in consequence some lose the right to be buried in the burial place of the chiefs.

In the matter of dress we see that the Kibangwa shell is the principal object of the royal regalia, and only chiefs are allowed to wear it with the lion skin. The head-dress (crown) is the same in every case and is made from the tail and part of the rump of a lion skin, the tail being split lengthwise and so forming two tails; the remainder of the skin goes transversely over the head from back to front, and an encircling band secures it. On the transverse piece of skin, rather nearer the crown than the forehead, is fixed the Kibangwa shell.

In the rest of the dress, the adornment of the person, and the throne, we see a diversity of objects and ideas, and a careful study of the information we have shows that there is little or no correlation of ideas between chiefs who originally came from the area, and the difficulty of tracing the origin of these customs is increased. Leopard, serval, and duiker skins are used in all the royal robes, and it is fitting that a chief should wear the skin of the lion, leopard, and serval, but why the duiker? And what is the connection between the chiefs of Ngondo, who came from Muhamwe, and the others?

One or two other objects of the regalias are of outstanding interest; the clapperless bells known as Kabembo of the chiefs of Busongoro, Bulindwa, and Bulamata. These are of rough iron, open at the sides, and if we put our hands together at the wrists with the fingers and the thumbs closed and keep the tips of the fingers of one hand about one inch away from the tips of the fingers of the other hand, we get both the shape and size of the bell. The two bells are joined together at the top by a curved piece of rough iron. The bells are struck on the outside, being held in the hand by the connecting piece of iron. The four-pronged spear of the chiefs of Busondo is, so far as I know, unique and reminds us of the trident of Neptune. We see drums mentioned

only for the chiefs of Isenge, Bukombe, Usenga, and with the latter the top is painted on the chest of the chief. Plain wooden shields are mentioned only for the chiefs of Matale and Bulindwa, being made of white wood for Matale.

The royal bows are variously strung with the gut or skin of the lion, eland, roan, duiker, and dikdik. The dikdik is solely used for this purpose by the chiefs of Ushamba, and the skins are obtained from the Tabora area. Although the chiefs of Lubalize are said to have come from the country of the Baholoholo, they have no image as do the Baholoholo of Mgobwe and Ulimba. In many instances the original articles of the regalia have been lost or destroyed through wars and other disturbances.

#### CHIEFS CORONATION COSTUMES

<i>Tribes from</i>	<i>Head, body and stools</i>	<i>Hands:</i>	<i>Right</i>	<i>Left</i>
CONGO				
1. <i>Baholoholo</i> <sup>4</sup>	Head shaved and dabbed with white spots; leopard skin across the body; from the waist a serval skin behind and a goat skin in front; seat of stool is marked alternatively with red and white around the edge; leopard skin placed over it and the legs are wrapped with strips of lion and leopard skin.			
2. <i>Matete</i> <sup>2</sup>	Duiker skin across the body; from waist serval skins behind and in front.		<i>Kibangwa</i> and leopard skin circlets on wrist.	
3. <i>Lubalize</i> <sup>2</sup>			<i>Kibangwa</i> and lion skin circlets on wrist.	
UKARANGA				
4. <i>Butandula</i> <sup>4</sup>				
5. <i>Usenga</i> <sup>2</sup>	Coloured cloth on head whereon the crown is placed; chest painted in concentric rings of two white, one red and the outside one, white; from the waist a cloth.		<i>Kibangwa</i> and lion skin on wrist.	
6. <i>Busongoro</i> <sup>2</sup>	Head shaved, a <i>marumba</i> bark cloth worn under the crown; body daubed in groups of three spots of red and white put in by		<i>Kibangwa</i> and lion skin on wrist.	

three sticks tied together; duiker skin across the body; from waist a *maramba* bark cloth front and back.

7. *Butwambo*<sup>2</sup>

White cloth on the head; body and limbs dabbed with red and white spots; duiker skin across the body, from the waist duiker skin behind, goat skin in front. The stool is dabbed with white and red spots and covered with a sheep skin.

Circlet of *Kibangwa* and lion skins secured together with elephant hairs, on wrist.

## MUHAMBWE

8. *Isenge*<sup>2</sup>

Leopard skin across the body; from the waist leopard skins fore and aft.

*Kibangwa* and lion skin circlets on wrist.

9. *Ubende*

Leopard skin across the body, and from the waist a cloth.

*Kibangwa* and lion skin circlets.

10. *Matale*<sup>2</sup>

Duiker skin across the body; from the waist serval skins back and front.

*Kibangwa* and lion skin circlets.

11. *Ushamba*

Duiker skin across the body; from the waist serval skins back and front.

12. *Bulindwa*<sup>2</sup>

White cloth on the head; body face and limbs dabbed with white spots; leopard skin across body; from the waist serval skin back and front.

*Kabangwa* and lion skin ditto. circlets on wrist.

13. *Ngando*<sup>4</sup>

Otter skin across the body; lion skin belt with serval skin at back and a folded cloth in front.

## RUANDA

14. *Bulamata*<sup>2</sup>

Cloth on the head, body and limbs dabbed with red and white spots; leopard skin across the body, from the waist a duiker skin at back and lion-cub skin in front. Seat of the stool painted with concentric red and white rings, no fixed number of rings but red is the central ring.

*Kibangwa* and lion skin circlets on wrist.

15. *Bukambo*<sup>3</sup>

Head, limbs and body dabbed with red and white spots; a *muramba* cloth across the body; from the waist serval skin behind and leopard skin in front.

*Kibangwa* and skin circlets on wrist.

16. *Busondo*<sup>2</sup>

White cloth on the head *marumba* bark cloth across the body; over which is a leopard skin and over this skin a duiker skin; from the waist leopard skins back

*Kibangwa* and lion skin circlets on wrist.

and front; stool is covered with sheep skin, a piece of lion skin is tied to one leg and pieces of leopard skin.

### MTONGWE

#### 17. *Bugwe*<sup>3</sup>

Face shaved and dabbed with red and white spots; chest painted in red and white rings. A duiker skin across the body; from the waist a leopard skin behind and a *marumba* bark cloth in front; seat of the stool is painted in concentric red and white rings. *Kibangwa* and lion skin circlets.

### SUCCESSION AND THE TOTEM

The laws of succession are divided into three or four categories. The son of the wife having the purest Mruanda blood in her veins usually succeeds to the throne of a Tusi chief, but with the Baholoholo, Matete, Butandula, Usenga, Busongoro, Isenge, Ubende, Matale, Ushamba, Ngondo, and Bukombwe, the succession is from brother to brother; and with the chiefs of Bungwe, Busondo, Buyenze, Bulindwa, and Bulamata, succession goes from father to son, but with the chiefs of Butwambo the old men select a new chief from among the members of the reigning family. Succession to the throne of Lubalize appears to follow no known rule for we see brothers and sons curiously mixed in the genealogical tree.

There may be a clue to the origin of the chiefs in their totems, because the same, or a very similar object occurs in the totems of those who originally came from the same area. Those who came direct from the Congo have adopted fish, the actual totems being the *ngenge* (*T. latifrons*) for the chiefs of Ngobwe and Ulimba; the *ka-ngela*, a small river fish not good for food, for the chiefs of Lubalize; and the *ngela*, for the chiefs of Matete, a small river fish (*vineke*). The four chiefs who came from Ukaranga and

were originally of Congo origin, have all adopted the *kabuya*, a grinding stone, as their totem. The chiefs of Ugondo and Ubende have also adopted the *kabuye*, but for the latter the ancient totem was the *mtasa*, a black ox. Both these chiefs originally came from Muhambe, and it is interesting to note that the totem of the chiefs of Muhambe is the black ox (see *Journal R.G.S.*, November 1925, p. 415). Of the other chiefs who originally came from Muhambe two (Bulindwa and Isenge) have adopted as their totem the wart-hog, named *mtaiya*.

The totem of Matale is *luhinda*, a bush-buck, and of Ushamba, *Lubinda*, said to be a mountain in the Muhambe, if this was ever so, the name is no longer to be found in either north or south Muhambe. With the chiefs who originally came from Ruanda three agree closely in their totems; Buyenze, Busondo, and Bulamata have adopted small birds; the *lubende*, for the two former, and a finch called the *malubendi*, or *kafunsi*, for Bulamata. Of the other chiefs who also originally came from Ruanda, the chief of Bukombe has a totem called *ndubula*, but this is now a name only, and the chiefs and the people have no idea what the original object was. The

<sup>1</sup> Anklets of black and white beads strung on otter skin worn on each leg.

<sup>2</sup> Anklets same as wristlets but on left leg only.

<sup>3</sup> Anklets same as wristlets but on right leg only.

<sup>4</sup> A circlet of Kibangwa and lion skin but not known where worn.

chief of Bugwe, states that he is of Tongwe stock, has the *kalinda*, a zebra as his totem.

In many cases the name given for the totem is not the local name of the object selected; for instance, the small fish *ngela* is locally called *vineke*, the wart-hog in Tongwe is *satura* and not *mtaiya* or *mutaiya*; the bush-buck in Kilongwe is *mbala*, or *nsuya* not *luhinda*; the small bird *malubendi* is locally called *kafunsi*, and the zebra in Tongwe is *mbega* and not *kalinda*.

The praise name for all the chiefs in Tongwe is Kasindi, but the meaning and origin of the word is unknown. Have the names Mtaiya and Mutaiya anything to do with Butaiya a place name which is heard in Tongwe? For instance Utaja (Utaya) on the German map in Busongoro, Matete is sometimes called Butaiya, and this name is

sometimes applied to the area comprising both Isenge and Bulindwa. This name is also loosely used in early days, that it is best omitted from the map altogether.

Among the many customs of the people of the world, greetings are interesting. As with the modern handshake, many salutation customs were to show that no weapon was being held in the hands. The *Ha* greeting by extending both hands with the palms together, and in the clapping of the hands of the people in Buyungu, Muhambe, Luguru, and throughout Tongwe, though this clapping may have a further significance, is an instance. In Tongwe great respect is shown to the chiefs and old men, the youngmen clapping hands to them on bended knee or going on both hands and knees and touching the ground with the forehead.

#### NOTE

Captain Grant was asked whether he could supply the botanical names for the trees mentioned by him. Captain grant referred the matter to the Department of Agriculture and Forestry and Mr. B. Verdcourt has supplied the following information:

*Bugongo*: no record.

*Kabumbu* is *Lannea discolor*, in Chiwemba, so it may be a *Lannea* Anarardiaceae.

*Kipando*: no record.

*Mibanga, Mbanga*: *Afromosia angolensis* (Bak.) Harms. Papilionaceae.

*Milama, Mlama* is usually a *Combretum*. Combretaceae.

*Minga*: *Marsdenia umbellifera*. k. Schum. Asclepiadaceae.

*Mipanda*: possibly a fig.; there are scores of similar names all meaning different species.

*Misonwasigansa, Msongawiganza*, and variant's' *Canthium* spp. Rubiaceae.

*Mninga*: *Ostroderris stuhlmannii*. Dunn or *Pterocarpus angolensis*, DC. Papilionaceae.

#### CONTRIBUTORS TO THIS NUMBER

DR. M. D. W. JEFFREYS spent many years in the British Colonial Service in West Africa. He is senior lecturer in Social Anthropology in the University of the Witwatersrand.

CAPT. C. H. B. GRANT, F.R.G.S. is on the staff of the Natural History division of the British Museum, London.

## NOTES OF THE QUARTER

**Social Anthropology Seminar in East Africa:** Under the auspices of the *Institut pour la Recherche Scientifique en Afrique Centrale* (I.R.S.A.C.) and the *East African Institute of Social Research*, the second seminar devoted to anthropological researches on cultures and societies of the eastern part of the African continent was held from the 16th to the 21st of July 1951 at the I.R.S.A.C. research centre for the Ruanda-Urundi Territory, in Astrida. The first seminar had taken place in Kampala (Uganda), December 1950.

Professor L. van den Berghe, Director of the I.R.S.A.C. was chairman for the Inaugural session. Dr. Audrey I. Richards, Director of the East African Institute of Social Research made a report on the researches undertaken by her Institute during the past six months and on the work in progress. Similar reports on the anthropological activities of I.R.S.A.C., of the Tanganyika Territory Sociological Research Branch and the West African Institute of Social and Economic Research were submitted, respectively, by Dr. J. J. Maquet, Mr. H. A. Fosbrooke and Mr. D. N. Leich.

During the eleven sessions of the seminar the two main subjects treated and discussed were the structure of the kinship groups and the bases of political authority. About thirty specialists, most of them working in the field, took part in the sittings of the conference: Mrs. P. Reining, Mr. and Mrs. Harris, Mr. and Mrs. E. H. Winter, Mr. and Mrs. J. Sherer, Mr. and Mrs. G. E. Goldthorpe, Mr. and Mrs. P. Guilliver, Messrs. L. A. Fallers, A. Southall, B. K. Taylor and A. Low associated to the East African Institute of Social Research; Messrs. V. Neessen, E. Finnoulst, G. De Clercq, A. Kagame, J. Hiernaux

attached to the I.R.S.A.C.; Messrs. L. Delcourt, G. Schmit, F. Corbisier of the Belgian Administrative Services in Africa; Mr. G. Wilson of the Tanganyika Territory Sociological Department. Mrs. M. Fallers, Misses J. Fortt and D. Canneel performed the office of secretaries.

\* \* \*

In the Annual Report for 1950 of the **King George V Memorial Museum** at Dar es Salaam, considerable progress and improvement is recorded since the appointment of a trained Curator. Of especial interest is the discovery, while on safari, of a series of caves containing enormous drums: the first of these had been discovered in 1935; now sixteen sites have been inspected and 78 drums in various stages of disintegration recorded. Information regarding further sites has been received. The report states: "None of the four tribes living in the area under consideration know who made these drums, and it is likely that they are more than two hundred years old."

\* \* \*

The **Rhodes-Livingstone Museum** has put out an attractive publication surveying activities from 1934-51. It is illustrated with photographs of the first museum in the old Magistrate's Court (1934-37), the second one, the United Services Club Building (1937-50), and various aspects of the New Museum building.

## BOOKS IN REVIEW

**Races. A Study of the Problems of Race Formation in Man.** C. S. COON, S. M. GARN, J. B. BIRDSELL. (Charles C. Thomas, Springfield, Illinois: 1950.) xiv + 153 pp., Illus.

This book, with its inaccuracies and its speculations, is the type that brings Anthropology into disrepute. The illustrations are good; the book is well printed on good paper and chapters at the end are acceptable, but chapters 1 to 6 are so full of inaccuracies and speculations as to make this part not only quite useless, but dangerous to put into the hands of students.

I shall now proceed to expose these shortcomings. The authors, who are three anthropologists, open with the remark that among professional anthropologists there is confusion about the meaning of the word race. This charge might have carried weight say thirty years ago, but it does not to-day.

To illustrate this confusion an illustration is drawn from *Drosophila*, and mention is made that difference in habit appears to be inherited, e.g. difference in breeding times; then a remark is made that "in plants as among animals, the concept of race includes differences in observable, external characters, in behaviour . . . The same thing is true of man." But we get no reference to inherited behaviour in man, so one wonders why inherited behaviour in plants, insects and animals is stressed.

Then comes this dogmatic statement that "father-daughter and mother-son marriages would start all kinds of trouble in a family in which both parents are alive." Not only is there no data on which to make such a statement but it is based on analogy with the apes. Surely three such scientists should not lay themselves open to the reprimand of trying to argue by analogy. Such arguments are not allowed in courts of law and cannot be permitted in the realm of science.

The statement that the best hunter in a small band often has the most wives is sheer conjecture. The information is not available. What is known is that the males of hunting bands are more often than not monogamous (Perry, W. J., *The Primordial Ocean*, London: 1935, p. 17.) and the guess-work on how harems of young wives are built up is deplorable.

The statement that it is difficult to attribute human pygmyism, e.g. the Congo pygmies (p. 28) "to mineral deficiency, for other animals in their environment are normal for their genera, including the elephants" is wide of the mark. Africa sports pygmy men, pygmy elephants, pygmy hippopotami, pygmy buffalo, pygmy chimpanzees, etc.<sup>1</sup>

The statement that the Belgian Congo pygmies "are perfectly proportioned — they are neither infantile nor deformed", though a point of view held by Sir Arthur Keith who regards them as eteolitic (*A New Theory of Human Evolution*, London: 1948, p. 249.) is not held by Ruggles-Gates, who regards them as achondroplastic. (*Human Ancestry*, London: 1948, p. 8.)

The statement that the Negro, of e.g. Africa, shows no clear adaptation in body form to his special environment (p. 40) is true, but his black skin which radiates heat about 12 times as rapidly as a white one, and his 12-20 per cent increase in the number of sweat glands per square inch of skin are very definite adaptations for remaining cool in a hot, humid, atmosphere. In other words, put a naked Nordic and a naked Negro onto hard manual labour in the sun on the Niger delta, and the chances are that the Nordic dies of heat-stroke. I know he does die there of heat-stroke, and that the Negro does not, having spent thirty years in Nigeria myself.

The distribution of helical hair offers no great

<sup>1</sup> JEFFREYS, M. D. W. "Pygmyism — Human and otherwise." *South African Journal of Science*. Vol. 47, March 1951.

problem, if it is accepted as a Negro racial characteristic. There is ample evidence to show that an eastwards oceanic slave trade in Negro slaves from Africa began before the Christian era and has continued to the present day. Such a trade would account for the present distribution and variation of helical hair forms. (Schapera, I., *The Bantu-speaking Peoples of South Africa*, London: 1937, Chap. I.) There is no need to postulate centres of spiral hair along a line eastwards from West Africa and to talk of tectonic movements, and of the second and third glacial advances to explain the present helical hair distribution. There has been no satisfactory correlation of the European glaciations with African or Indonesian climatic changes; nor is the tectonic hypothesis of any value. Old Stone Age cultures are lacking in Melanesia. This dragging in of European ice-ages and middle Pleistocene tectonic movements is an attempt to explain *ignotum per ignotius*. No ancient Negro skeletal remains other than the doubtful Grimaldi ones have been found. With the Negro in Africa as the centre of helical hair, its present day distribution is explicable by the known slave trade.

The presence of helical hair in other groups still awaits an explanation. The remark that "it is not probable that the extreme forms of curvature, helical or spiral, reached the New World before 1492", i.e. the date of Columbus reaching the Americas, ignores the finding of pre-Columbian Negro skeletons mentioned by Hooton; the evidence of pre-Columbian contact between the Mandingo of Africa and the Americas (Weiner, L., *Africa and the Discovery of America*, Philadelphia: 1922, III, Cap. xii.) There is also the possibility of helical hair reaching the Americas across the Pacific. The cottons cultivated in the Americas in pre-Columbian times were Indian cottons spun on Indian looms (Hutchinson, I. B., Silow, R. A., Stephens, S. G., *The Evolution of Gossypium*, London: 1947, p. 79).

In support of the transpacific migration of Indian cotton and Indian looms is the fact that in this area of the Americas are found Polynesian types (Hooton, E. A., *Up from the Ape*, New York: 1947, p. (646); while Elliot Smith drew

attention to the turban mahouts on the necks of elephants carved on the stone stellae at Copan, British Honduras (G. Elliot Smith, *Elephants and Ethnologists*, London: 1924, p. 20). Hence there is a very strong case for the arrival and existence of the helical type of hair in the Americas long before 1492.

Speaking of the peoples who have the following three features, deep pigmentation, spiral hair and thickened tissues, the authors remark, "we do not know why the African Negro and the Melanesian alone have them" (p. 64). Of course he doesn't, even the postulations of tectonic movements in mid-Pleistocene do not help; but the slave trade will explain the occurrence of these three features not only in Melanesia but also, say, among the Negroes of Kentucky, U.S.A.

Describing adaptation to cold, the authors postulate that any people caught in a series of isolated pockets (p. 66) would either survive or die out. They then assume without any evidence that some did and write: "We must suppose that they were as expert in adapting themselves to their environment as the modern Tungus, Chukchi and Eskimo. We must grant them double suits of tailored clothing", etc. We "must", say the authors, otherwise the authors will be wrong. As it is quite impossible for the authors to be wrong, therefore there "must" have been people with double-suits. Yet the Terra del Fuegians of the Antarctic don't wear such suits. As the authors say, there "must" have been such people, thereafter we find the authors saying: "out of this climatic circumstance came a type of human being with a flat face", etc. (p. 67). Well, well, *post hoc, ergo propter hoc*. Further on one reads, "just as the Mongoloids spread out from their area of development so did the blond peoples" (p. 83). Could not the authors say where this Mongoloid area of development was? One could then test their speculations by examining the area for a continuous development of stone age cultures from the old stone age to the time that the Mongols spread out.

The authors are aware of speculations for they write, "If only we could settle a few of these

problems and afford to stop speculating" (p. 74). No scientist can afford to speculate.

The horse, if I understand these authors aright, appeared in 500 B.C., presumably in China; yet it appeared in Babylonia in 3,000 B.C. and in Egypt in the 17th century B.C.

The Homeric poems are accepted as describing the climate of North Eurasia in about 1100 B.C. Classical scholars will be much indebted to these three scientists for fixing the date of the Homeric poems. The *Encyclopedia Britannica* (14th ed., Vol. II, p. 689) cautiously remarks "the estimates of Homer's birth vary from 685 B.C. to 1159 B.C."

Blondness is said to have appeared sometime after 7800, but there is no evidence to show that modern man was not blonde in the days of the Swanscombe skull. Who can say that the Cro-magnon male was not a blonde? The authors indulge again in speculation. To account for blondness they write: "We may assume that the mutation to blondism reached a higher frequency in the Baltic peoples." Why?

As for blue eyes: they can and do occur as mutations among pure Negroes, e.g. in West Africa is the valley of the Cross River. Personal observation.

The statement that some of the earlier hominid lines "either died out or, like the Tasmanians, were absorbed" is another inaccurate statement. That the Tasmanians died out would be a transparent euphemism calculated to deceive no one. Whatever their numbers were when the Europeans discovered them — and one estimate is 20,000 — "after the war of 1825 to 1831 there remained scarcely 200. These wretched survivors were gathered together into a settlement, and from 1834 onwards every effort was made for their welfare, but 'the white man's civilization proved scarcely less fatal than the white man's bullet' and in 1877, with the death of Truganini, the last survivor, the race became extinct" (Sollas, W. J., *Ancient Hunters*, London: 1924, p. 127.) So much for the accuracy of the statement that the Tasmanians became absorbed.

In discussing the distribution of *tori* no mention is made that the African negro lacks as a rule the eye-brow ridges, common in the Caucasoids.

The chicken-and-egg parable is put forward as a plea for offering no speculation as to whether the special brain areas grew first, or the greater development of regional musculature. This parable is an unfortunate choice. The chicken is a multicellular organism, the egg a single one. It is thus quite clear that the single cell came first and the multicellular afterwards.

The statement (p. 102) that roundheadness has no discernible function is open to criticism. One opinion is that a round skull is more easily balanced on the spiral column than a long one.

The statement on page 111 is most timely that there is insufficient data available to draw up a family tree for man and his co- relatives.

The definition that the Hamite is restricted to the peoples of East Africa who are dark and have a Mediterranean skeleton cannot be accepted. I would recommend *Semitic and Hamitic Origins*, by G. A. Barton, to these three anthropologists to correct their Hamitic outlook.

The book, because of its inaccuracies, cannot be recommended to students, and will be tossed aside by scientists because of its speculations. *Human Ancestry* and *Up from the Ape*, still remains the sheet anchor for theories on the evolution of the human race.

M. D. W. JEFFREYS.

**Peoples of Sierra Leone Protectorate.** M. McCULLOCH. (London: 1950.) 102 pp., map. 8/6.

This monograph, Part II of Western Africa, is one of the series in an Ethnographic Survey of Africa published under the aegis of the International African Institute with a grant from the Colonial Office. No publisher is mentioned and the monograph is produced by photographic reproduction of type scripts.

Dr. Little (p. 4) states his *ad hoc* reasons for calling the Mende a nation. Because his reasons are not those accepted by anthropologists as to what constitutes a nation only confusion results through the misuse of accepted definitions. One may say that the Mende are not a nation because they lack the essential feature, namely a central government.

No mention is made of the species of rice or cotton cultivated. Presumably the local Agricultural Department or Kew could have supplied the information. One wants to know whether the cultivated varieties derive from local wild varieties or are they, e.g., Asiatic species. Such information would throw light on culture origins. Mention is made of red rice, i.e. rice soaked in palm-oil; but there is also the "red testa". Is that variety not grown? It is common on the Niger.

Nothing is said about manioc except that it is a secondary crop. Was it not a crop in use before the Americas were discovered by Columbus? Weiner in his book, *Africa and the Discovery of America*, marshals impressive evidence to show that the Mandingoës were in touch with the Americas, and in page 193 of Vol. I, points out that Columbus saw manioc in Guinea.

On page 10 the remark is made in the last sentence that palm kernel shells are taken to the stores for sale. One wonders to what purpose these cracked shells are put. Surely on fallow land anyone has the right to collect palm fruit from any palm. The remarks on dyeing are unsatisfactory; is blue the only dye used?

*Mboya*, the marriage payment, appears to function as *lobolo* does among the Southern Bantu. If it does, then the statement that its payment legitimizes marriage is incorrect; for it merely fixes the status of the children of the marriage, i.e. determines whether their status is that of their mother's or father's family and has nothing to do with marriage *qua* marriage. This point is made clear in that poorer men contract a recognized union with a woman which is a marriage, because no fine for "woman damage" is payable, but the children's status is in their mother's group until the *mboya* is paid. No mention is made whether a seed-bearer without any further *mboya* is sent to produce children on behalf of a barren wife, nor whether the levirate occurs, nor is it stated whether, on divorce, the man may claim the children but not the *mboya*, or if he claims the *mboya* that he loses the children.

Under "legal procedure" one is left guessing as to how court decisions are enforced. A number

of punishments are listed but how they are imposed is not stated. If the mob or the populace carries them out then the term "legal procedure" is incorrectly used.

The assertion that pledging of land was unknown before European contact comes as a surprise. The pledging of land is in Nigeria Native custom and not a result of European culture contact.

To describe the lesser members of the *Poro* as subsidiary devils and the main impersonator as a "devil" in a monograph that purports to be scientific makes one wonder whether the author is sufficiently trained for his task. Why cannot these figures be described as maskers?

As marriage is regarded as a rite of passage and in all cases known to the reviewer is solemnized by a communal meal, do the five lines devoted to marriage (p. 45) wherein no such meal is mentioned, give a correct account?

Why is the concept, "the land of dead" traced to Mohammedan influence? Throughout the description of Mende culture runs a common culture that extends eastwards to the Cross river and a "land of the dead" is common to the Ibo and Ibibio without any trace of Mohammedan influence.

The general impression gained from reading this account of the Mende and Lokho is that of an indigenous people conquered by ruling groups wherein we can still detect traces of the earlier culture surviving the coming of the kings.

The description of an installation of a chief (p. 63-64) is interesting because it conforms with the pattern laid down by Hocart in his *Kingship*. Does the sacred box hold the chief's insignia? I suspect it contains the relics of predeceased chiefs.

The suggestion (p. 71) that *dyinganga* is probably derived from the Arabic *jin* may be true for the first syllable, but there is in Africa a wide-spread root *nganga* — a medicine man which is in no way connected with Arabic.

The origin of the Vai script (p. 87) is not a pure invention. Moamu Dualu had attended a Mission school, before he invented his script. There are several misprints, three appear on page 21.

M. D. W. JEFFREYS.

**Some Pioneer Missions of Northern Rhodesia and Nyasaland.** C. M. MACKINTOSH. (Rhodes-Livingstone Museum, Occasional Papers, No. 8, 1950) 42 pp., 2/6.

This is a brief survey of the main events in the history of the larger missions working in those territories north of the Zambezi: the London Missionary Society, La Société des Missions Evangéliques de Paris, the Primitive Methodist Mission to the Bala, the Universities' Mission to Central Africa, and the Livingstone Mission. It is a great story of missionary heroism and fortitude. Apart from the trail-blazing of Livingstone, dealt with in a separate publication, many great names stand out in this narrative: Arnot who held the fort in Barotseland before going north to found the "Garenganze Mission" in Angola and the Congo, M. et Mme Coillard of Barotseland followed by the Jalla brothers, Laws of Livingstone and Elmslie of Ngoniland; as well as the work of such laymen as the Moir brothers who established the A.L.C. as a complement to the work of the missionaries. Most detail is given to the account of the founding of the mission among the "Barotse". Lewanika's character is well portrayed and his development from barbarity to a civilized rule well depicted. Naturally these accounts are sketchy; full details are to be had from various monographic publications. But this is a useful assemblage of data concerning missions in Northern Rhodesia and Nyasaland. Attention is focussed on the pioneer age, up to 1904 when the railway reached the "Falls"; and it would be a good service if brief histories of all the various missions at work in this area were prepared, and brought more up to date.

C.M.D.

**David Livingstone.** A short portrait of the great missionary explorer (based on an account by I. M. FLETCHER of the L.M.S.). (Rhodes-Livingstone Museum Occasional Papers, No. 9, 1950.) 34 pp., 2/6.

This is quite a striking portrait bringing into relief many aspects of the great African missionary's character and aims. There are numerous

quotations from letters hitherto unpublished, and the general impression is of Livingstone's devotion to Africa, his vision of the opening up of the continent as a necessary prerequisite to missionary advance, his abhorrence of the slave-trade in every shape and form, and his ability to capture the devotion of his African companions.

Most of a letter of appointment to Richard Thornton written by Livingstone in 1858, is produced, and the following extracts reveal guiding principles governing the great missionary explorer's relations with the Africans:

"It is hoped that no occasion will ever arise in which it will be necessary to use our fire arms for protection against the natives but the best security from attack consists in so acting as not to deserve it and letting the natives see that you are well prepared to meet it. You are strictly enjoined to exercise the greatest forbearance towards the people, and while retaining proper firmness in the event of any misunderstanding to endeavour to conciliate as far as possibly can be admitted with safety to our party.

"Your own principles will lead you in all your dealings with the people to follow the strictest justice but it is necessary to remind you that even the appearance of over-reaching or insulting must be carefully avoided."

The preservation of these additional personal touches is most welcome, and this little book is well worth reading. On page 3 the date of Livingstone's death should read 1873 not 1875.

C.M.D.

**Nandi Work and Culture.** G. W. B. HUNTINGFORD. Colonial Research Studies, No. 4, 1950. 126 pp., 8/6.

The six chapters in this book are part of a report written for the Government of Kenya dealing with the social, political and economic organization of the Nandi. The part dealing with the social and political life of the tribe is to be published elsewhere. This book deals with history, topography, cattle, economic activities, culture

and culture conflict. There is a large amount of factual material of great value, and maps of the Nandi-speaking areas as well as of details of the Nandi Reserve around Kapsabet are given. The Kipsikis and Suk peoples are allied closely to the Nandi, and they, together with the Masai (here spelt Masae) are classified by Huntingford as Nilo-Hamites. These people are located to the North-east of Lake Victoria in Kenya Colony. The Nandi are a "cattle people", and considerable statistical material regarding their cattle is included. We await the publication of the further material, for what is published here is naturally one-sided and incomplete.

C.M.D.

**Samuel Makoanyane.** C. G. DAMANT (Morija: 1951.) 35 pp., illus., 2/-.

This is an interesting account of the young Sotho clay-sculptor whose baked clay figures have become quite widely known. The author encouraged him from the beginning and secured for him a market for his work. Makoanyane developed a distinctive realistic art in his moulding, and his death from T.B. in 1944 cut short a career which might have developed much further. A number of examples of his figurines is given in the illustrations.

C.M.D.

**Die Bambuti-Pygmaeen vom Ituri.** Ergebnisse zweier Forschungsreisen zu den Zentralafrikanischen Pygmäen. PAUL SCHEBESTA, S.V.D. (Boekhandel Folk Zoon, Brussel: 1938.) In drei Bänden: I, "Die Wirtschaft der Ituri-Bambuti." xii+284 pp., 189 Bildern in Text, 5 Skizzen, 25 Bildtafeln, in 4to.

Our previous reviews of vol. II & III of Schebesta's research work among the Bambuti-Pygmyies is now completed by a review of the vol. I on

economics. According to the author it is the most important one, as he says that religion and sociology are shaped by economics.

He deals not only with the description of their economic methods and their material culture, but also with all complexes that surround their economics. Thus he devotes a main chapter to diseases and their treatment, another on, how the Pygmies spend their leisure time in order to show, that protection of life and what makes life worth living are as much functions of economics as are the provision for food, housing and clothing, each of which forms one of the other three chapters.

The abundance of material in each is very interesting and of great value. The author's gift of observation of daily life, his exactness in describing the smallest objects and his ample knowledge acquired during two long tours is outstanding. The material collected is illustrated by many drawings and photographs and by critical comparison with items found by previous researchers.

The author, not satisfied with his complete ethnographical survey, aims at contributing something to the cultural historical aspect of the Pygmies. "Wildbeutertum" is his term for their independant culture. He says that it describes more fully the character of their economics than does the word "foodgatherer", as it refers to their mentality from which their nomadism originates, as well as to the poverty of their material culture and to their symbiosis with the neighbouring negroes.

It is an absolute proof for him, that the Pygmy culture is as independent as the Pygmy race. Further he is able to describe three different Pygmy culture strata, and says that the oldest did not use the present hunting methods.

A. SCHMIDT.